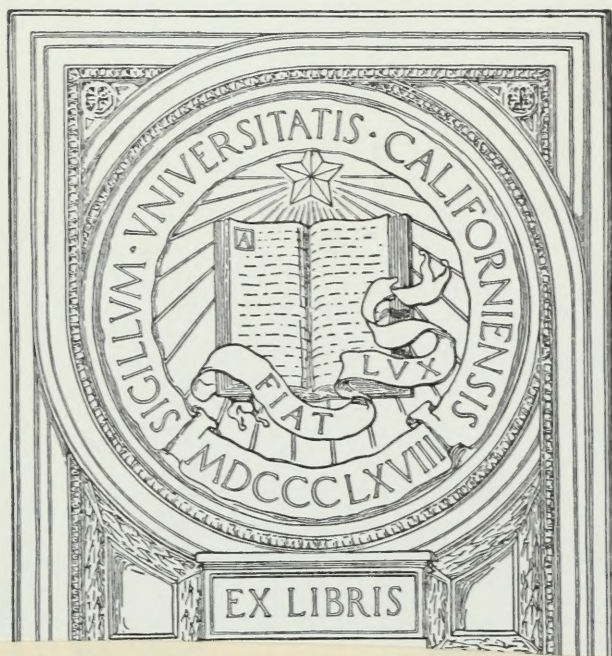


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DRAFT.

OUTLINES

OF AN

INTERNATIONAL CODE.

BY

DAVID DUDLEY FIELD.

NEW YORK:
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1872.

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BOOK FIRST.

RELATIONS OF NATIONS
AND OF THEIR MEMBERS
IN TIME OF PEACE.

PREFACE.

THIS work should be taken for what its name imports: the "Draft Outlines of an International Code." It is not put forth as a completed Code, nor yet as the completed outlines of a Code, but as a draft of the outlines. It is intended for suggestion, and is to undergo careful and thorough revision. The present volume is but a part of the whole work. Another will appear in a few months, treating of the modifications in the relations of nations, and of their members, to each other, produced by a state of War.

The history of the undertaking is this: At the meeting of the British Association for the Promotion of Social Science, held at Manchester in September, 1866, I ventured to propose the appointment of a committee to prepare and report to the Association the Outlines of an International Code, with the view of having a complete Code formed, after careful revision and amendment, and then presented to the attention of governments, in the hope of its receiving, at some time, their sanction. The proposition was favorably received, and a committee was appointed, consisting of jurists of different nations. In the distribution of the labor among the members of the committee, a portion was assigned to me. It was at first understood, that, after preparing their respective portions, the members should interchange them with each other, and then meet for the revision of the whole

and the completion of the joint production. But the distance of the members from each other has made it difficult for them to take note of each others' progress, and to interchange their respective contributions with advantage, previous to a general meeting for consultation and revision. I have therefore thought it most convenient, for the other members of the committee as well as for myself, to present my own views of the whole work, by essaying a draft of the whole, hoping that my colleagues may do the same. However little my labors may be worth, I submit them, though with great diffidence, as my contribution to the general design.

The scheme embraced not only a codification of existing rules of international law, but the suggestion of such modifications and improvements as the more matured civilization of the present age should seem to require. The purpose was to bring together whatever was good in the present body of public law, to leave out what seemed obsolete, unprofitable or hurtful, and then to add such new provisions as seemed most desirable. The Code, which the Association would propose, is such an one as should win the commendation of good and wise men, for international regulations, in the interests of humanity and peace. With the view of aiding in the formation of such a Code, the present work has been undertaken. What in it is old will generally be found explained and justified by the notes; what in it is new is suggested for the consideration of those, who think that much may yet be done by the authority of public law, for the peace and prosperity of the world.

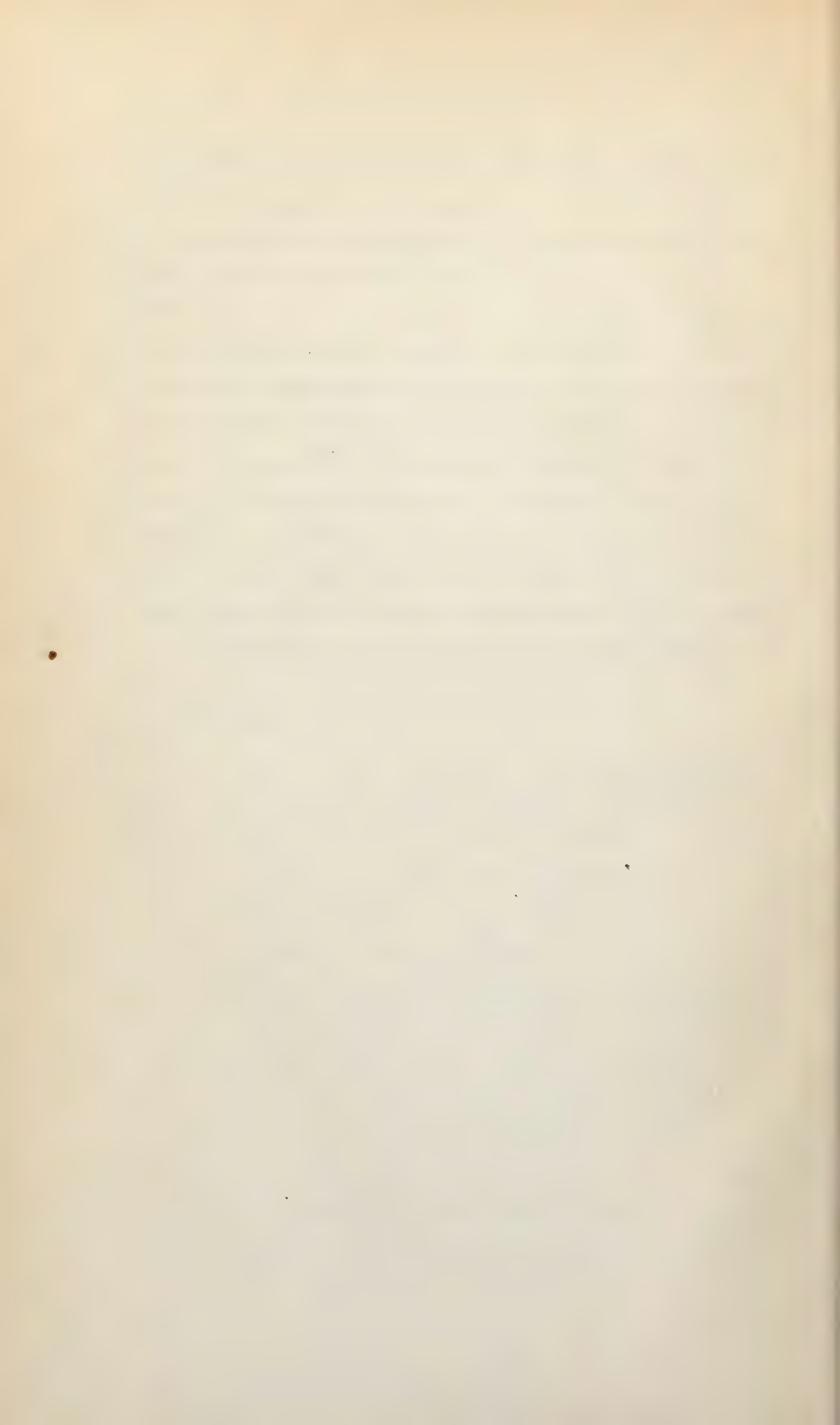
There will of course be found many omissions and many mistakes. In the progress of the work some provisions have

been introduced which require a modification of earlier ones, but they will be readily perceived. Thus the word "league" was in some instances used to designate a measure of distance, before the details of the Title on "Weights and Measures" were fixed upon.

In the preparation of this volume I have had the assistance of several gentlemen, to whom I am under great obligations. I would especially mention President F. A. P. BARNARD, of Columbia College, who prepared the Titles on "Money," "Weights and Measures," "Longitude and Time," and "Sea Signals." I must acknowledge my indebtedness also to Messrs. AUSTIN ABBOTT, CHARLES FRANCIS STONE, and HOWARD P. WILDS, gentlemen of the New York Bar, who have greatly aided me in different parts of the work.

DAVID DUDLEY FIELD.

NEW YORK. January, 1872.



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DRAFT OUTLINES

OF AN

INTERNATIONAL CODE.

PRELIMINARY ARTICLES.

- ARTICLE 1. Adopting Clause.
2. "Nation" defined.
3. Use of the term "Nation" in this Code.
4. Use of the term "Person" in this Code.
5. "Member" defined.
6. "Subject" and "Citizen" defined.
7-11. Divisions of the Code.

Adopting clause.

Article 1. The following rules are established and declared, by the nations assenting hereto, as an International Code, by which those nations, and their members, respectively, shall be governed in their relations with each other.

As to the extent to which existing special treaties will be abrogated, see *repealing clause*.

By another article any two nations may, by special treaty, modify the application of any of the provisions of this Code, as between themselves and persons and things subject to their exclusive jurisdiction.

A question arises, how far the rules of this Code shall be applied by the nations uniting in it to other nations and their members.

There is a large class of subjects, chiefly those known under the generic title of PRIVATE INTERNATIONAL LAW, in which the advantage of a uniform rule depends partly upon its being a rule resting not so much upon convention, binding only the nations which accede to it, as upon principles of jurisprudence, applicable in all courts, and proper to

be imposed upon persons of every nationality, without reference to the question whether the nations of which such persons are members have agreed in the adoption of the rule. The provisions of Division Second of Book First are of this general nature. It may be a question, therefore, whether the application of that Division ought to be restricted to the nations uniting in the Code, and to the members of such nations. When, for instance, a question arises as to the right of a foreigner to hold real property, or to reclaim a wreck, or to claim for his ship the privileges of a domestic ship, the provisions of the First Division will be found not to apply, unless he be a member of a nation uniting in the Code. But, if the question arises in any of the courts of the nations uniting in the Code, whether a foreign marriage or divorce is valid; whether a foreign contract is to be judged by the law of one place, or that of another; or a question upon any other of the rules contained in Division Second, it may be thought that the rules prescribed by the Code should be applicable, without reference to the nationality of the parties. The inconvenience or incompleteness of a rule on such subjects of private right, which should be applicable to the transaction, as far only as might affect the interests of foreigners of certain nationalities, but not so far as to affect those of the members of the nation, or of foreigners generally, is obvious. If it is desired to give these rules such a general character as will, so far as the courts of the assenting nations are concerned, solve and terminate the Conflict of Laws, the following clause may be added to Article 1;—

And the provisions of Division Second of Book First, entitled PRIVATE INTERNATIONAL LAW, are to be applied, in each nation which is a party to this Code, not only to foreigners who are members of nations parties to this Code, but also to their own members, and to foreigners of whatsoever nation, except where a more restricted intention appears.

“*Nation*” defined.

2. A nation is a people permanently occupying a definite territory, having a common government, peculiar to themselves, for the administration of justice and the preservation of internal order, and capable of maintaining relations with all other governments.

1 *Phillimore's International Law*, p. 77; 1 *Kent's Commentaries*, 188. And see *Texas v. White*, 7 *Wallace's U. S. Supreme Court Reports*, 700. *Bluntschli, (Droit International Codifié, Art. 18.)* adds the restriction that sufficient guaranties of stability should be indicated.

A people whose government is not independent, but vassal,—such as that of Egypt,—or incapable of maintaining international relations,—such as those of the States of the American Union,—and a people occupying no definite territory,—such as nomadic tribes in Asia and Africa,—or having abandoned one territory to take possession of another,—as in the case of the Mormon emigration,—are not *nations*, within the provisions of this Code; although they may be regarded as such for some

purposes, and the two latter classes may make treaties. *Bluntschli, Dr. Intern. Cod.*, §§ 21, 22.

Austin, (*Province of Jurisprudence*, p. 199,) cited by *Lawrence*, (*Commentaire sur Wheaton*, p. 155,) prefers to use the term in an ethnologic sense; and designates an independent political body as a "State." But the word "States" is by usage appropriate to designate some political bodies not independent; and we prefer the term "nation" for those that are independent. We here define a nation as it exists as a political fact. For an eloquent discussion of the element of liberty or spontaneity in the right of nationality, see *Fiore, Nouveau Droit International*, par Pradier-Fodéré, vol. 1, ch. 1, p. 97, and note on p. 119. *Fiore* defines a nation thus: "Une libre et spontanée association de personnes qui, par communauté du sang, de langue, d'aptitude, par une affinité de vie civile, de temperament, de vocation, sont aptes, et predisposées à la plus grande union sociale."

As to the exceptional case of Indian or other subordinate tribes, within the territory of a nation, but having a quasi national existence of their own, see *Cherokee Nation v. Georgia*, 5 *Peters' U. S. Supreme Court Reports*, 1; *Mackey v. Coxe*, 18 *Howard's U. S. Supreme Court Reports*, 100; *Goodell v. Jackson*, 20 *Johnson's Reports*, (*New York*.) 693, and 188; *Lawrence, Com. sur Wheaton*, 264.

Use of the term "nation" in this Code.

3. Whenever the word "nation" is hereafter used in this Code, it signifies only a nation party to it, except when an intention to signify any nation whatever is expressed.

Use of the term "person" in this Code.

4. Whenever the word "person" is used, it signifies only a person who is a member, or subject to the jurisdiction of, one of the nations, except when an intention to signify any person whatever is expressed.

"Member" defined.

5. A member of a nation is a person who, according to the rules prescribed in the chapter on NATIONAL CHARACTER OF PERSONS, is one of the people composing such nation.

"Subject" and "citizen" defined.

6. The members of a nation in which the sovereign power is vested in a particular person or persons, are

called subjects ; the members of a nation in which the sovereign power is vested in the people, are called citizens.

Divisions of the Code.

7. This CODE is divided into two BOOKS.

The first treats of the relations of nations and of their members to each other, except as they are modified by a state of war.

The second treats of the modifications in the relations of nations and of their members to each other, produced by a state of war.

The same.

8. The FIRST BOOK has two DIVISIONS.

The first Division, entitled PUBLIC INTERNATIONAL LAW, contains the rules respecting the relations of nations to each other and to the members of other nations.

The second, entitled PRIVATE INTERNATIONAL LAW, contains the rules respecting the relations of the members of a nation to the members of other nations.

The same.

9. The FIRST DIVISION of the FIRST BOOK has four PARTS.

The first Part concerns the *relations of nations to each other*.

The second concerns the *relations of a nation to the persons and property of members of other nations*.

The third contains provisions intended solely for the *mutual convenience* of nations and of their members.

The fourth contains provisions intended solely for the *preservation of peace*.

The same.

10. The SECOND DIVISION of the FIRST BOOK has two PARTS.

The first Part defines the private *rights of persons*,¹ as affected by the relations of nations.

The second regulates the *administration of justice* in respect thereto.

¹ Perhaps this should be all persons whatsoever ; see note to Article 1.

The same.

11. The SECOND BOOK has three DIVISIONS.

The first Division treats of *belligerents* ;

The second of *allies* ;

The third of *neutrals*.

BOOK FIRST.

PEACE.

DIVISION FIRST. PUBLIC INTERNATIONAL LAW.
SECOND. PRIVATE INTERNATIONAL LAW.

DIVISION FIRST.

PUBLIC INTERNATIONAL LAW.

- PART I. RELATIONS OF NATIONS TO EACH OTHER.
II. RELATIONS OF A NATION TO THE PERSONS AND PROPERTY OF THE MEMBERS OF OTHER NATIONS.
III. UNIFORM REGULATIONS FOR MUTUAL CONVENIENCE.
IV. PROVISIONS FOR THE PRESERVATION OF PEACE.
-

PART I.

THE RELATIONS OF NATIONS TO EACH OTHER.

- TITLE I. ESSENTIAL RIGHTS.
II. EXTRA-TERRITORIAL ACTION.
III. INTERCOURSE.
IV. INTERNATIONAL COMPACTS.
V. REMOVAL OF PERSONS.
-

T I T L E I .

ESSENTIAL RIGHTS OF NATIONS.

- CHAPTER I. Sovereignty.
 II. Equality.
 III. Perpetuity.
 IV. Territory.
 V. Property and Domain.

The right of a nation to protect its members is not separately treated ; because, its authority, within the national jurisdiction, is sufficiently recognized by Part II. ; while the rights of members beyond the jurisdiction as defined by various provisions of this Code, are to be peacefully enforced under Part IV.

CHAPTER I.

SOVEREIGNTY.

- ARTICLE 12. "Sovereignty" defined.
 13. Foreign powers not entitled to act within a nation.
 14. Sovereignty, how vested.
 15. Sovereign or chief officer not subject to other jurisdiction.

"Sovereignty" defined.

12. Every nation is sovereign within its own jurisdiction ; that is to say, it is, of right, independent of all foreign interference, and free to express and enforce its will, by action within its jurisdiction, without opposition from any foreign power.

The independence and liberty thus enjoyed by each nation are not absolute, but are limited by the equal freedom and independence of others, by the provisions of this Code, and by the special compacts to which the nation is a party.

See *Laurence's Wheaton*, 132 ; 1 *Wildman, Int. Law*, 47 ; 1 *Phill. Intern. Law*, 164 ; *Laurence, Com. sur Wheaton*, p. 161.

Bluntschli enumerates the following rights as included in the sovereignty of a nation :

1. To make its own constitution ;

2. To legislate independently for its people and territory ;
3. To govern and administer itself ;
4. To choose its own officers ;
5. To appoint and accredit its representatives to foreign nations.

Fiore, Nouv. Dr. Int. (ch. II., pt. I.) lays stress on the right of organization as the central element of internal sovereignty, and this is the American doctrine.

The right of self-preservation is evidently inherent in that of sovereignty, but it seems unnecessary to define it. If it were to be defined, it might perhaps be in such a mode as follows :

Every nation has the right of self-preservation : to be made effectual within its territorial jurisdiction by any means which its sovereignty can exercise ; and beyond its jurisdiction, by such means as are consistent with the provisions of this Code, and of its own special compacts. *Ortolan, Règles Int. et Dipl. de la Mer*, vol. 1, p. 50.

Foreign powers not entitled to act within a nation.

13. No nation is bound to tolerate the performance, within the places subject to its exclusive jurisdiction, as defined by Title VIII., of any act, official or unofficial, of any other nation, except such as are provided for by this Code, or by special compact.

Bluntschli, Dr. Int. Cod., § 69.

Sovereignty, how vested.

14. The sovereignty of a nation may be vested in one or more persons, or in the whole people, according as its law may direct.

Sovereign or chief officer not subject to other jurisdiction.

15. The sovereign or chief executive officer of a nation is never subject to the jurisdiction of any other nation, either in his person or property,¹ except as follows :

1. To the same extent with his nation in its collective capacity ; and,

2. In his private capacity, to that of any nation of which he is a member.²

¹ 2 *Phill. Intern. Law*, 120 ; *Wadsworth v. Queen of Spain*, 17 *Queen's Bench Rep.*, 171.

² *Brunswick v. Hanover*, 6 *Beavan's Rep.*, 1.

CHAPTER II.

EQUALITY.

ARTICLE 16. Equality in rights and rank.

17. National emblems.

Equality in rights and rank.

16. All nations are equal in rights.¹ No distinction in rank between them is permitted ;² and wherever, in treaties or other official acts, two or more of them are named in juxtaposition, they shall be named in alphabetical order, according to the first letter of their names, respectively, as expressed in the French language, except that each nation may have its own name first in the document which it retains.³

¹ 1 *Kent's Com.*, 21 ; *Klüber, Droit des Gens*, § 89.

² As to the existing distinctions which it is proposed to abrogate as matter of right by this rule, see *Bluntschli*, §§ 84-98 ; *Ortolan, Règles Int. et Dipl. de la Mer* ; *Fiore, Nouv. Dr. Int.*, vol. 1, p. 278.

³ *Treaties of Vienna*, 1815.

National emblems.

17. No nation has a right to appropriate the emblems, title, coat of arms, flags, signals, or uniform, in use and previously appropriated by another nation.

Bluntschli, Droit Intern. Cod., § 82.

CHAPTER III.

PERPETUITY.

ARTICLE 18. Diminution of territory or population.

19. Change in form of government or in dynasty.

20. Anarchy.

21. Double crown.

22. Annexation of one nation to another.

23. Cession or other annexation of part of territory.

24. Division of a nation.

25. Apportionment of property.

26. Apportionment of debts.

Diminution of territory or population.

18. Diminution of the territory or population of a nation does not affect its existence, so long as its people

have a territory and government, such as is described in article 2. Nor does it affect the rights and obligations of the nation in respect to other nations and their members, except so far as such rights or obligations are necessarily dependent on the territory or population lost.

Suggested by *Bluntschli, Dr. Int. Cod.*, §§ 47-50.

Change in form of government or in dynasty.

19. A change in the form of its government, or in its dynasty, does not affect the continuity of existence of a nation, or its property, nor does it affect its rights or obligations in respect to other nations or their members,¹ except so far as such rights or obligations are necessarily dependent on the continuance of the old form of government² or dynasty.

Lawrence's Wheaton, 39, 52; *Halleck's Int. Law*, p. 77; 1 *Wildman's Int. Law*, 68; 1 *Phill. Int. Law*, 148; 1 *Kent's Com.*, 25. And see *Bluntschli*, §§ 39-45; and *King of Two Sicilies v. Willcox*, 1 *Simons' Rep.*, (N. S.) 301.

¹ This rule is especially important in its application to national debts. The only questions of real difficulty, arising under the general rule, are those which spring out of insurrections. These will be treated in the second Book.

The *King of the Two Sicilies v. Willcox*, 1 *Simons' Rep.*, (N. S.) 301, establishes the principle that where a *de facto* government has, as such, obtained possession of property, the government which displaces it succeeds to all its rights.

² For instance, a compact between two republics to protect each other in a republican form of government, would be terminated by the final establishment of a monarchy in one or both.

Anarchy.

20. A temporary condition of anarchy does not affect the continuity of existence of a nation.

Bluntschli, § 19. As to the effect of a *restoration* upon the acts of the revolutionary government, see *Id.*, §§ 44, 45; *Lawrence's Com. sur Wheaton*, p. 214, &c.

Double crown.

21. When one nation chooses, or receives by succession, as its sovereign, the sovereign of another nation, it does not thereby lose its independent existence,

or its separate relations with other nations, unless it be so provided by the terms of union.

Bluntschli, §§ 51, 75.

Annexation of one nation to another.

22. Where one nation is annexed to another, so as to form a part thereof, the latter, by the act of annexation, acquires all the rights and becomes bound to fulfill all the obligations of the former.

This obligation was fully recognized by the new kingdom of Italy, upon annexing a number of States to Piedmont. Such, also, has been the universal practice where entire States have been annexed by conquest. The United States of America, on annexing the Republic of Texas in 1845, with the consent of the latter, disclaimed all liability for the Texan debt. (See *Lawrence, Com. sur Wheaton*, p. 211.) The question never arose in any diplomatic negotiation; but the claims of the creditors of Texas were felt to be so strong that the United States eventually provided means for their payment, (September, 1850; 5 *U. S. Stat. at Large*, 797; 10 *Id.*, 617,) without acknowledging any liability, but as part of an agreement by which Texas renounced its claims to certain boundaries.

As to the effect of treaty stipulations, see *Lawrence, Com. sur Wheaton*, p. 210.

Cession or other annexation of part of territory.

23. Where part of the territory of one nation is annexed, by cession or otherwise, to the territory of another nation, the latter nation, by the act of annexation, acquires all the rights and becomes bound to fulfill all the obligations which pertained to the former nation, in respect of the territory acquired and its inhabitants and the property therein,¹ but no others.²

¹ See note to last article; *Bluntschli*, § 47.

² *Id.*, § 48.

Division of a nation.

24. Where a nation is, from any cause, divided into two or more, each portion, by the act of division, acquires all the rights, and becomes bound to fulfill all the obligations, which pertained to the original nation, in respect of the territory in which such portion is situated, or in respect of its inhabitants, and the property therein.

And except as otherwise provided in the three following articles, all other divisible rights and obligations must be so apportioned that each portion of the divided nation shall have that share which it would have had without the division; and, until such apportionment, the whole of such rights and obligations adhere to each portion in common with the other portion or portions.

See 1 *Phill. Int. Law*, 157; *Halleck*, 78; 1 *Kent's Com.*, 25, 26; *Terret v. Taylor*, 9 *Cranch's U. S. Supreme Ct. Reports*, 50; *Bluntschli*, § 49.

Apportionment of property.

25. Where a nation is, from any cause, divided into two or more, its property is to be apportioned as follows, unless otherwise agreed :

1. Immovables, appropriated to public use, such as public buildings and establishments, and charitable and religious houses, pass to the portion of the nation holding the territory in which they are situated; and such portion is not bound to make compensation to the other therefor, except where the property served the uses of the population of the other, and they incur new expenses to supply its loss.

2. Ships of war, arms, equipments and munitions, military and naval, must be divided in proportion to the population.

3. Public lands, other than those provided for by subdivision 1 of this article, the public funds, and in general, such national property as serves only indirectly the objects of public utility, form a common fund, which must be divided in proportion to the population, with this qualification, that immovables must always be appropriated to the portion in whose territory they are situated, and their value considered in the partition.

See *Bluntschli*, §§ 56-58.

Apportionment of debts.

26. Where a nation is, from any cause, divided into two or more, each portion has the right to have the debts of the original nation provided for from the prop-

erty of the original nation ; and debts not so provided for must be apportioned in proportion to the revenues raised in the different portions of the territory.

Bluntschli (§ 59) makes the debts secured by mortgage or hypothecation of immovables rest on that portion of the nation which takes the immovables. We suggest, as a fairer rule, that the common debts be first provided for out of the common property.

CHAPTER IV.

TERRITORY.

ARTICLE 27. "Territory" defined.

- 28. Boundary by the sea.
- 29. Adjacent islands.
- 30. Boundary by a stream or channel.
- 31, 32. Boundary by inland lakes, &c.
- 33. Wilderness.
- 34. Power to determine boundaries.
- 35. Exception.
- 36. Injuring boundaries, marks or monuments.
- 37. Loss of territory, and acquisition of territory.
- 38. Acquisition by occupation.
- 39, 40. Extent of occupancy.
- 41-43. Accretion.
- 44. Reclaiming land washed away.
- 45. Ownership of islands.
- 46. Changes of stream.
- 47. Transfer or cession.
- 48. Conquest.

"Territory" defined.

27. The territory of a nation is the land and water which it possesses, or has a present right to possess, as defined and limited by actual and peaceful occupation, by special compact, or by the provisions of this Code.

Territory is here used in the sense of sovereignty and jurisdiction, and not in the sense of property ; and therefore it is limited by occupation. *Ortolan* (*Règles Int. et Dipl. de la Mer*,) distinguishes between : (1.) Ports and Roadsteads ; (2.) Gulfs and Bays ; (3.) Straits and closed Seas ; (mers esclaves ;) and (4.) Parts of the Sea adjacent to the coasts within a certain

distance. In respect of the first, he says a nation has a right of property, and may declare them closed, treating, however, all nations alike. The same rule he applies also to gulfs, &c., the mouths of which are not more than double cannon-shot across, or are protected by forts or islands. But this principle seems to extend to the waters bordering the coast; and no distinction is therefore recognized in the above article and article 51.

During the Franco-Prussian war, (1870,) the American government objected to the hovering of armed vessels off the coast, awaiting the exit from American ports of merchant vessels of the enemy.

The quasi-territorial jurisdiction over land and water within the lines of an army or fleet, beyond the ordinary territorial limits, is provided for in Title VIII., on NATIONAL JURISDICTION.

Boundary by the sea.

28. The limits of national territory, bounded by the sea, extend to the distance of three marine leagues¹ outward from the line of low-water mark; and where bays, straits, sounds, or arms of the sea,² are inclosed by headlands not more than six leagues apart,³ such limits extend three leagues outward from a line drawn between the two headlands.

¹ Inasmuch as cannon shot can now be sent more than two leagues, it seems desirable to extend the territorial limits of nations accordingly. The ground of the rule is, the margin of the sea within reach of the land forces, or from which the land can be assailed.

² *Mahler v. Transportation Company*, 35 *New York Rep.*, 352; *Lawrence's Wheaton*, p. 320; *Fattel's Law of Nations*, 130; *Hauteville, Droit des Nations Neutres*, (2nd ed.,) 89. See *Church v. Hubbart*, 2 *Cranch U. S. Sup. Ct. Rep.*, 187, 235. *Bluntschli* (§ 303) says that where the sea boundaries of adjacent nations overlies each other, each nation is bound to respect the sovereignty of the other on the common area; but such cases will be provided for by articles 30, 31 and 32.

³ It is believed that no definite rule has heretofore been laid down on this point. See *Halleck's Int. Law*, p. 132; *Lawrence's Wheaton*, p. 322. The distance between the headlands of Delaware Bay is about fifteen miles.

Adjacent islands.

29. Islands in the sea, beyond the distance specified in the last article, are presumed to be part of the territory of the nation possessing the adjacent main land.

Halleck, p. 131, § 15. The limit of distance seems to be necessarily indefinite. Islands newly formed by accretion are provided for by articles 41 and 45.

Boundary by a stream or channel.

30. The limits of national territory, bounded by a river, or other stream, or by a strait, sound, or arm of the sea, the other shore of which is the territory of another nation, extend outward to a point equidistant from the territory of the nation occupying the opposite shore; or if there be a stream or navigable channel, to the thread of the stream, that is to say, to the mid-channel; or, if there be several channels, to the middle of the principal one.

“Thalweg.” *Bluntschli*, § 298. *French treaties*.

The right to the use of the whole river or bay, for navigation, &c., is nevertheless an easement or servitude common to both nations. *The Fame*, 3 *Mason's U. S. Circuit Ct. Reports*, 147.

Boundary by inland lake, &c.

31. The limits of national territory, bounded by a lake, or other inland water, not being a stream, extend outward to a straight line drawn from the points at which such territory touches the land of other nations on the shore, at low-water mark; except where such line would fall within less than three marine leagues of the shore of another nation.

The same.

32. Where the line mentioned in the last article would fall within less than three marine leagues of the shore of another nation, at low-water mark, it must so deflect as to run that distance from such shore, unless the distance between the opposite shores is less than six marine leagues, in which case the boundary line runs equidistant from the two shores.

Wilderness.

33. Where two nations have settled upon the same continent without intervening settlements, and no large stream or body of water, or range of mountains intervenes between their settlements, the boundary between them is presumed to be equidistant from the nearest settlements; but, where there is such water or mountain range, the one which is most nearly equidistant

from such settlements is presumed to be the boundary.

¹ *Phill. Intern. Law*, 251-254. See *Bluntschli*, § 297.

Power to determine boundaries.

34. Coterminous nations have jurisdiction jointly to determine and establish the boundaries between their respective territories ;¹ and it is their duty to do so, and to mark the same clearly.²

¹ *Poole v. Fleeger*, 11 *Peters' U. S. Sup. Ct. Rep.*, 185 ; *Latimer v. Poteet*, 14 *Id.*, 4.

² *Bluntschli*, § 296.

Exception.

35. The foregoing provisions as to boundaries do not apply where the boundary is otherwise defined by special compact.¹

¹ A boundary agreed upon by the collectors of revenue cannot be regarded as valid. *The Fame*, 3 *Mason's U. S. Circ. Ct. Rep.*, 147.

Injuring boundaries, marks, or monuments.

36. Willfully removing, concealing, injuring or falsifying any monument, mark or sign, made or adopted by the concurrence of two or more nations for indicating a boundary between them, is a public offense.

The regulations between France and the Grand Duchy of Luxembourg, Oct. 15, 1853, for preservation of boundary marks, (6 *De Clercq*, 386, Art. XI,) provides : that, offenders are to be prosecuted and judged according to the law of the State in which they are found ; and that, for this purpose, proceedings had in either State shall, as far as necessary, have equally "*foi en justice*" in the other.

Loss of territory, and acquisition of territory.

37. A nation may lose territory :

1. By abandonment ;
2. By destruction ;
3. By transfer ; or,
4. By conquest.

A nation may acquire territory :

1. By occupation ;
2. By accession ;
3. By transfer ; or,
4. By conquest.

No provision is made for devise or succession after death, inasmuch as the devise of a crown cannot be deemed to destroy the identity of the State; and the power of a monarch to alienate any part of the national territory by will should not be admitted.

Acquisition by occupation.

38. Territory can be acquired by occupation, in the following cases only:

1. When it was previously unoccupied by any other than a savage nation;
2. When the nation which previously occupied it has, without ceding it, renounced the sovereignty which it exercised over it, either expressly, or by abandoning the territory; or,
3. When the inhabitants of the territory overthrow their government and freely join themselves to the occupying nation.

Extent of occupancy.

39. Occupancy of any part of an island uninhabited or inhabited only by savages, is presumed to be an occupancy of the whole.

The same.

40. A nation is presumed to occupy all territory within the limits over which it maintains an effective control; and such presumption is conclusive, unless it appears that some other nation actually occupies a portion of such territory.

Accretion.

41. Land formed in the sea by accretion belongs to the nation whose territory is nearest.

1 *Phill. Int. Law*, 257; *The Anna*, 5 *Robinson's Adm. Rep.*, 332; *Bluntschli*, § 295, note.

The same.

42. When land is formed on the shore from natural causes and by imperceptible degrees, the boundary between the nation owning it and the nations owning other parts of the shore is modified so as to conform to the change in the shore.

This and the two following articles are suggested by the *Code Napoleon*, Liv. II., Tit. II., Art. 556-559; and *Civil Code* reported for *New York*, §§ 443-448.

The same.

43. When land is formed on the shore from artificial causes or by perceptible degrees, the boundary between the adjoining nations is not changed thereby.

Reclaiming land washed away.

44. If a considerable and distinguishable part of the shore is carried away by the water, to a place within the boundaries of another nation, the nation owning it while attached to the shore may reclaim it within one year, if it can be restored to the territory of the nation so claiming it; but until it is so restored it must be deemed to be part of the territory within which it is situated.

Ownership of islands.

45. An island, formed from natural causes in any water other than the sea, belongs to the nation within whose boundary it is formed; or, if it is formed upon the boundary of two or more nations, each nation owns so much of the island as lies within its original boundary.

Compare *Bluntschli*, § 295.

Changes of stream.

46. If a stream which constitutes the boundary between two or more nations forms a new course, abandoning its ancient bed, from natural causes, and by imperceptible degrees, the boundary follows the center of the stream, as defined in article 30; but in other cases the boundary remains in the center of the ancient bed.

1 *Phill. Int. Law*, 258, 259; *Bluntschli*, § 299.

Transfer or cession.

47. Territory can be acquired by transfer or cession, upon the agreement of the nations whose sovereignty is affected by the transaction.

Acquisition by transfer or cession is imperfect, until possession is taken by the nation receiving the transfer.

Compare *Bluntschli*, §§ 282, 296. He adds, that to make a cession valid, the inhabitants of the ceded territory must recognize the cession, and have the enjoyment of their political rights under the nation receiving the transfer.

Conquest.

48. Conquest includes any mode of obtaining possession of territory against the will of the power by which it was previously occupied.

Acquisition by conquest becomes complete by the continuance of peaceful possession.

See *Bluntschli*, § 290.

CHAPTER V.

PROPERTY AND DOMAIN.

ARTICLE 49. Capacity to have property.

50. Eminent domain.

51. Internal domain.

52. Prescription.

Capacity to have property.

49. Subject to its constitution and laws,¹ a nation has capacity to acquire, hold and dispose of:

1. Property² not within the territorial limits of any other nation; and,

2. With the consent of any other nation, property within the territorial limits of such other nation.

¹ The capacity to acquire real property may be limited or regulated by the organic law.

² The property of a nation is of two kinds:

1st. Public property or public domain; that is, that kind which the government holds as a mere trustee for the use of the public; such as navigable rivers, highways, &c.; and,

2nd. Private domain, or domain of the State; that is, those things in which the nation has the same absolute property as an individual would have in like cases. *Halleck*, p. 123.

Eminent domain.

50. The power of a nation, by virtue of eminent domain, to take, or suspend the use of,¹ property within its territorial limits, for the public use, safety or welfare, extends to the property of foreign persons, states and nations.

Adequate compensation² must be made therefor, and, except in cases of immediate necessity, at the time of the interference.

¹ By several treaties, the property of a foreigner cannot be taken, or his use thereof impeded or impaired by public authority, without adequate compensation for the interference.

Treaty between France and

Honduras,	February 22, 1856,	Art. VII., 7	<i>De Clercq</i> , p. 10.
New Grenada,	May 15, 1856,	" VI., 7	<i>Id.</i> , 102.
Nicaragua,	April 11, 1859,	" VII., 7	<i>Id.</i> , 586.
Peru,	March 9, 1861,	" V., 8	<i>Id.</i> , 193.

Treaty between the United States and

Bolivia,	May 13, 1858,	Art. III., 12	<i>U. S. Stat. at L.</i> , 1003.
Nicaragua,	June 21, 1867,	" IX., 15	<i>Id.</i> , (<i>Tr.</i>), 59.

The detention of a vessel in port by the President of the United States, under the Act of Congress, April 30, 1818, (3 *U. S. Stat. at L.*, 447,) was held not a taking and use of private property for public purposes, within the meaning of the Constitution; but an arrest by due process of law. Court of Claims, 1866, *Graham v. United States*, 2 *Court of Claims Rep.*, *Nott & H.*, 327. Some of the treaties expressly require compensation in case of embargo, &c.; and the article, above, is accordingly extended to interferences with the use of property.

² Articles condemned for violation of law, or because of adaptation to illegal uses,—*e. g.*, burglars' tools, obscene publications, &c.,—are not to be regarded as property within such a rule as this.

Internal domain.

51. As against other nations, a nation is presumed to be the owner of all public, and all unappropriated, property within its limits,¹ and has a right to forbid any other nation from owning or holding any property within its territorial limits, except as otherwise provided in this Code,² or by special compact.

¹ See *Fiore, Nouv. Dr. Int.*, vol. 1, Lib. 2, chs. 1, 2; *Lawrence's Wheaton*, p. 303, § 3.

² See Chapter VI., on NAVIGATION.

Prescription.

52. The uninterrupted possession of territory or other property for fifty years by a nation, excludes the claim of every other nation.

Prescription is applicable to the title to national property. *Rhode Island v. Massachusetts*, 4 *Howard's U. S. Sup. Ct. Rep.*, 639; *Laurence's Wheaton*, p. 303, § 4.

Vattel suggests the propriety of fixing by agreement of nations a definite rule as to the number of years necessary to found a prescription. *Law of Nations*, B. 2, c. 11, § 151.

Phillimore questions the expediency and the possibility of so doing. *Int. Law*, Vol. 1, p. 272, note r.

Compare *Dana's Wheaton*, § 164, note 101.

TITLE II.

EXTRA-TERRITORIAL ACTION.

CHAPTER VI. Navigation.

VII. Discovery.

VIII. Exploration and Colonization.

IX. Fisheries.

X. Piracy.

CHAPTER VI.

NAVIGATION.

ARTICLE 53. Freedom of the "high seas."

54. Navigation of the high seas and other waters.

55. Rivers communicating with the sea.

56. Inland waters.

57. Menacing armaments.

58. Military ports.

59. Public vessels may refit in port.

60. Restrictions.

61. False colors and signals.

62. Right of approach.

63. "Visitation" defined.

64. Right of visitation.

65. Visitation on the high seas.

66. Mode of visitation.

67. Salutes.

68. Searches forbidden.

69. Flag and documents.

Freedom of the "high seas."

53. The high seas are the ocean, and all connecting arms and bays or other extensions thereof, not within the territorial limits of any nation whatever.

No part of the high seas is the subject either of property, or of exclusive jurisdiction.¹

¹ *Ortolan, Règles Int. et Dipl. de la Mer*, v. 1, pp. 112, 120.

Navigation of the high seas and other waters.

54. The right to navigate the high seas and all other navigable waters not within the territorial limits of any nation whatever,¹ is common to all nations and their members; and except as provided in this Code, can be abridged or renounced only by actual consent.²

¹ See *Ortolan*, above cited; and *Bluntschli*, §§ 304-307, 314, 316.

² 1 *Phill. Int. Law*, § CLXXIV.; *Heffter*, § 74, p. 148.

Doubted by *Hautefeuille*, *Droit des Nations Neutres*, v. 1, p. 222. As to tacit consent arising from disuse, see *Lawrence's Wheaton*, 339-346, § 10.

Rivers communicating with the sea.

55. A nation, and its members, through the territory of which runs a navigable river, have the right to navigate the river to and from the high seas, even though passing through the territory of another nation; subject, however, to the right of the latter nation to make necessary or reasonable police regulations for its own peace and safety.

Message of President Grant to the Congress of the United States, December, 1870; and treaties there cited.

Inland waters.

56. The right to navigate inland waters not communicating with the ocean by a natural channel, is common to every nation, whose territory borders thereon, and to its members.

Bluntschli, *Droit International Codifié*, § 316; 1 *Phill. Int. Law*, § CCIV.

See provisions as to RIGHTS OF OCCUPATION, in the articles of Section II. of Chapter XXV., entitled PERSONAL RIGHTS OF FOREIGNERS.

Menacing armaments.

57. A nation may refuse to allow menacing armaments of another nation to enter or remain within its territorial limits.

Ortolan, *Rég. Int. et Dipl. de la Mer*, vol. 1, pp. 143, 145.

Some treaties fix a number as a limit,—three, four, five, or six ships at a time.

Military ports.

58. A nation may refuse to allow public or private ships of another nation to enter its purely military ports.

Ortolan, *Reg. Int. et Dip. de la Mer*, vol. 1, p. 145.

Public vessels may refit in port.

59. Subject to the last two articles, public ships of one nation, whether armed or unarmed, and private ships, may enter, remain and refit in any port of another, which is open to the commerce of any nation whatever.

Suggested by treaty of friendship, commerce and navigation between France and San Salvador, January 2, 1858, Art. XVII., 7 *De Clercq*, 362. Qualifications in the case of war are contained in Book Second of this Code.

Restrictions.

60. The right of navigation must be exercised subject to the regulations for avoiding collisions, usually observed by ships where it is exercised,¹ and those prescribed by Chapter XXXII., entitled RULES OF NAVIGATION, [LAW OF THE ROAD AT SEA,] and subject to such reasonable police and military regulations in respect of the territorial waters of another nation, as the latter may prescribe,² and to Chapter X., relative to PIRACY.

¹ *Bluntschli*, §§ 330-332. This has been lately held by Judge Blatchford, American Admiralty Judge in 6th District.

See, to the contrary, the Saxonia, *Lushington's Rep.*, 414; 15 *Moore's Privy Council Rep.*, (N. S.,) 682.

² *Dana's Wheaton*, § 180, note 108. The practice of America and England authorizes seizures for revenue offenses, etc., beyond this limit. 1 *Phill. Int. Law*, § CXCVII.

False colors and signals.

61. The displaying of false colors, or the making of false signals by a ship, with intent to mislead any ship, public or private, of another nation, is a public offense.

Ortolan, *Rég. Int. et Dip. de la Mer*, vol. 1, p. 254.

Right of approach.

62. A ship, whether public or private, has a right to approach another on the high seas, if it can, and to hail or speak it, and to require it to show its colors; the approaching ship first showing its own.

Ortolan, *Rég. Int. et Dip. de la Mer*, vol. 1, p. 233, &c.

“*Visitation*” defined.

63. “*Visitation*” is the boarding of a ship.

Right of visitation.

64. No ship is subject to visitation by a ship of another nation,¹ except in the following cases :

1. A private or other unarmed ship within the territorial limits of the nation by whose public ship the visitation is made ;²

2. On the high seas, in the cases provided in the next article.³

¹ *Ortolan*, above cited ; *Fiore, Nouv. Dr. Int.*, vol. 2, p. 489, &c. ; *Halleck, Int. Law*, p. 593, § 1. See *Lawrence's Wheaton*, pt. 4, ch. 3, § 18.

² The territorial limits will be extended by article 28, to three marine leagues ; and it does not seem necessary to recognize the right of pursuit beyond that distance.

³ The effect of these rules will be to require ships to show their true colors at sea, and to allow armed ships to visit in case of a breach of this rule, confining the visitation, however, to the purpose of ascertaining the character of the offender, and its identity. See the subject discussed in *Ortolan, Règles Int. et Dipl. de la Mer*, vol. 1, p. 233, &c.

Visitation in time of War is provided for in Book Second.

Visitation on the high seas.

65. If a private or other unarmed ship, being upon the high seas, not under convoy of an armed ship of its nation,¹ does not show its colors in response to an armed ship of another nation duly requiring it, or if there be probable cause for believing that it shows false colors with intent to mislead an armed ship of another nation, it may be compelled to submit to visitation.

¹ The presence of the convoying ship is a sufficient assurance of nationality. *Wildman, Int. Law*, vol. 2, p. 121. Perhaps this should be extended to armed ships ; and if so, the clause as to convoy will be omitted.

Mode of visitation.

66. In the case of a visitation upon the high seas, the visiting ship must give distinct and intelligible warning of its visit.¹ If a gun be fired, warning must first be given by a blank shot, and then, after reasonable opportunity for submission, by a shot ahead ;² and no more force must be used than is necessary to

ascertain the nationality and the identity of the offending ship.³

¹ The warning may be by hailing. See *Halleck*, p. 610, § 15.

² *Ortolan, Règles Int. et Dipl. de la Mer*, vol. 1, p. 253.

³ *Halleck*, p. 606, § 10.

Salutes.

67. An armed ship entering a fortified port or roadstead of a foreign nation must salute it, and must be saluted in return.¹ But ships of small armament may omit the salute, communicating the reasons to the authorities of the port.²

Beyond this, a salute is not required between ships and fortifications, or between ships themselves.³

¹ For the controversies on the right of salute, see *Ortolan*, vol. 1, p. 316.

The only sufficient object of making a salute obligatory is to give notice to the authorities of the arrival of an armed foreign ship.

² *Guide Pratique des Consulats*, vol. 2, p. 38.

³ *Halleck* (p. 118, § 29,) says, a salute should be returned gun for gun. To refuse an exchange of salutes is regarded as evidence of a want of friendship and good will, which justifies the other party in asking explanations; but it cannot in itself be considered an offense or an insult, sufficient to justify hostilities. *Id.*, p. 110, § 21.

Searches forbidden.

68. Subject to article 85, a ship of one nation, on the high seas, is not subject to search by a ship of another nation.

Flag and documents.

69. Every ship navigating waters beyond the territory of its nation is bound to carry the flag of its nation, and to have on board documentary evidence of its national character.¹

The documentary evidence of the character of a public armed ship is the commission of its commander, or the written order of his government.

That of a private or other unarmed ship must be in the form prescribed by the article entitled *Contents of Passport*, in Chapter XX., entitled NATIONAL CHARACTER OF SHIPPING.

De Cauchy Dr. Mar. Int., vol. 1, p. 47; *Bluntschli*, § 326; 1 *Phill.*, § CCIII.

¹ See provisions of Chapter XX., on NATIONAL CHARACTER OF SHIPPING.

CHAPTER VII.

DISCOVERY.

ARTICLE 70. Right of discovery.

71. Authority.

72. Ratification.

73. Right of possession.

74. Its exercise, how manifested.

75. Limits of continental discovery.

76. Abandonment of right of possession.

Right of discovery.

70. Every nation has the right to search for new territory.

Authority.

71. Authority to search for new territory which shall inure to the benefit of a nation, may be conferred by it on the members of any nation whatever, by a previous authorization or by subsequent ratification.¹ Without such authority, a discovery made even by a member of the nation confers no right upon it.

¹ *Heffter*, § 70, subd. III., p. 142, and note 4.

² A contrary doctrine has been contended for by the United States, but without sufficient ground. 1 *Phill. Int. Law*, § CCXXXV., p. 250; *Heffter* § 70, subd. III., p. 142, and note 4; *Bluntschli*, § 279.

Ratification.

72. A discovery not previously authorized by the nation cannot be subsequently ratified by it, to the prejudice of any other nation, without the consent of the latter.

Right of possession.

73. The nation, under whose authority a discovery of territory is made, has the right to take possession of it as a part of its territory.

See *Johnson v. McIntosh*, 8 *Wheaton's U. S. Sup. Ct. Rep.*, 543; *Worcester v. Georgia*, 6 *Peters' U. S. Sup. Ct. Rep.*, 515; 3 *Kent's Com.*, 378; 1 *Id.*, 178, and note.

The individual discoverer has a prior right, as against other individuals, only to so much of the soil as he actually occupies and uses. *American Guano Company v. United States Guano Company*, 44 *Barbour's (New York,) Rep.*, 23.

Its exercise, how manifested.

74. The intent to exercise the right of possession can be manifested only by an actual beneficial occupation.

1 *Phillimore's Intern. Law*, § CCXLVIII.; *Bluntschli, Droit Intern. Codifié*, § 278.

Limits of continental discovery.

75. If the discovered territory is a continental sea-coast, or any part of it, possession thereof is deemed to extend into the interior, to the sources of the rivers emptying within the discovered coast, to all their branches, and the territory watered by them.

5 *American State Papers*, 327-329. See to the contrary, *Bluntschli*, § 282.

Abandonment of right of possession.

76. The right of possession is deemed abandoned when the intent to exercise it is not manifested within twenty-five years after the discovery.

†

CHAPTER VIII.

EXPLORATION AND COLONIZATION.

ARTICLE 77. Right of exploring and colonizing.

78. Exception.

79. Right of pre-emption.

Right of exploring and colonizing.

77. A nation has for itself and each of its members the right to explore and colonize any territory not within the territorial limits of a civilized nation.

"When Englishmen establish themselves in an uninhabited or barbarous country, they carry with them not only the laws but the sovereignty of their own State." *Adv. Genl. v. Ranees Surnomoye Dossee*, 2 *Moore's Privy Council Rep.*, (N. S.) 59; *Forsyth's Cases and Opinions in Const. Law*, 20.

Exception.

78. The continents of Europe, Asia, and America are, in every part, under the dominion of established government, and are not subject to colonization or settlement, in any portion thereof, except with the consent of such government.

Gardner's Institutes, p. 24, § 12.

Right of pre-emption.

79. The nation first exercising the right of colonization acquires thereby the right of first purchase from the native inhabitants. Whenever an uncivilized community has an established government, that government is to be respected by civilized governments so far at least, as that in the first instance intercourse with its people is to be sought through such government, and redress for injuries from any of them is to be demanded of it.

1 *Phillimore's Intern. Law*, § CCXLIII. Compare *Bluntschli, Droit Intern. Codifié*, §§ 280-1.

CHAPTER IX.

FISHERIES.

ARTICLE 80. Common right of fishery.

81. Limits.

Common right of fishery.

80. A nation has for itself and each of its members the right to take fish in any waters not within the territorial limits of any other nation whatever.

1 *Phill. Int. Law*, pp. 202, 205; *Bluntschli*, § 307; 1 *Twiss*, §§ 176, 182; *Dana's Wheaton*, §§ 180, 270-275.

See treaty, as to fisheries, between France and Great Britain, 11 November, 1867, 9 *De Clercq*, 773; the convention, relative to New Foundland fisheries, between France and Great Britain, 14 January, 1857, 7 *De Clercq*, 208; and an additional act between France and Spain regulating international fisheries, March 31, 1859, 7 *De Clercq*, 578.

Limits.

81. For the purposes of this Chapter, the territorial limits of a nation extend only to three geographical miles from low water mark, to be measured with respect to bays, the mouths of which do not exceed ten geographical miles in width, from a straight line drawn from headland to headland.

Marten's Nouv. Rec., 16, p. 954.

Convention between England and France, Art. 9, Aug. 3, 1839.

Compare Article 28.

The right of fishermen lawfully pursuing their calling, to land for the purpose of drying and mending their nets, and procuring necessary supplies, is secured in common with the equal privileges of foreign vessels generally, by the provisions of this Code, as to NAVIGATION, and as to UNIFORMITY.

CHAPTER X.

PIRACY.

ARTICLE 82, 83. "Pirate" defined.

84. Harboring pirates forbidden.

85. Capture of pirates authorized.

86. Trial and condemnation.

87. Destruction.

88. Captor's reward.

89. Restoration of property.

90. Salvage, &c., not allowed to public vessels.

"Pirate" defined.

82. Every person whatever, who, being an inmate of a private ship,¹ upon the high seas,² as defined by Article 53, willfully and not in self-defense :

1. Destroys, or seizes by force and appropriates, any other ship, or its lading, or any part of either ;³ or,

2. Kills, wounds, or seizes by force and abducts any inmate whatever of any other ship ;

Is deemed a pirate.

¹ It is not necessary that the ship should be an armed ship. *Goujet et Merger, Dict. du Droit Commercial*, 4, p. 178, § 13.

² By the law of the United States and of France, this limitation of place is not essential to the crime. *Loi 10 avr. 1825, art. 2.* See 2 *Goujet et Merger*, 4, p. 178.

³ "The motive may be gratuitous malice, or the purpose may be to "destroy, in private revenge for real or supposed injuries done by persons "or classes of persons, or by a particular national authority." *Dana's Wheaton*, § 124, note 83.

Depredation not amounting to robbery is sometimes said not to amount to piracy. To the contrary, however, see *Dana*, above ; *Goujet et Merger*, above, §§ 9, 11.

The abolition of *privateering* is provided for in BOOK SECOND of this Code.

The same.

83. Every person whatever, who, without authority from the owner, and with intent to injure, vex, or annoy any person whatever, or any nation whatever :

1. Removes, destroys, disturbs, obstructs, or injures

any oceanic telegraphic cable not his own, or any part thereof, or any appurtenance or apparatus therewith connected, or severs any wire thereof; or,

2. Destroys or injures any international railway, canal, lighthouse, or any other structure or work, the perpetual neutrality of which has been declared:

3. Or who beyond the territory¹ of any nation reduces to slavery, or holds in slavery, any person whatever, or conveys, or receives with intent to convey, any person whatever as a slave;

Is deemed a pirate.

The abolition of privateering renders unnecessary any provision for the case of foreigners, who accept privateering commissions or letters of marque from a nation at war with another, and who, when taken by the latter nation, may be punished as pirates, under some treaties. Treaty between the United States and Great Britain, 1794, Art. XXI., 8 *U. S. Stat. at L.*, 127.

¹ The acts specified in this subdivision, when committed within the territory of any nation, are to be left to the local law.

Harboring pirates forbidden.

84. No nation can receive pirates into its territory, or permit any person within the same to receive, protect, conceal or assist them in any manner; but must punish all persons guilty of such acts.

Treaty between the United States and Great Britain, 1794, Art. XX., 8 *U. S. Stat. at L.*, 127.

Capture of pirates authorized.

85. If there be probable cause to suspect that a ship is piratical,¹ any person whatever may cause its arrest and search; and if thereupon the suspicion is justified, may capture the ship: but if the suspicion is not justified, the person and ship causing the arrest must make satisfaction in damages according to the circumstances.

¹ The Mariana Flora, 11 *Wheaton's U. S. Sup. Ct. Rep.*, 40.

Trial and condemnation.

86. Any piratical ship may be brought into a port of any nation, and the ship, its lading and inmates, may be there condemned by the courts of such nation.

Destruction.

87. If they are unable to bring her into port, the captors of a piratical ship may destroy her.

Captor's reward.

88. A ship or its lading condemned for piracy is to be adjudged to belong to its captors, except as respects the property of innocent third persons.

Restoration of property.

89. Property taken by pirates, and brought or found within the territorial limits of a nation, is to be restored¹ to its innocent owner, saving the rights of holders thereof in good faith and for value, and subject to the payment of such reasonable salvage and expenses, not exceeding one-fourth of its value, as may be adjudged by the courts of such nation.² Proceedings for such restoration must be there begun on behalf of such owner, or the nation of which he is a member, within one year from the time of so bringing or finding the property.³

¹ To this effect are most of the following treaties :

Treaty between the United States and

France,	1778, Art. XVI., 8 <i>U. S. Stat. at L.</i> , 22.
Sweden,	1783, " XVII., 8 <i>Id.</i> , 70.
Great Britain,	1794, " XX., 8 <i>Id.</i> , 127.
Central America,	1825, " IX., 8 <i>Id.</i> , 326.
Mexico,	1831, " XI., 8 <i>Id.</i> , 414.
Chili,	1832, " VII., 8 <i>Id.</i> , 435.
Colombia,	1824, " VII., 8 <i>Id.</i> , 308.

Treaty between France and

New Grenada,	15 May, 1856, Art. XVII., 7 <i>De Clercq</i> , 102.
Honduras,	22 Feb. 1856, " 7 <i>Id.</i> , 10.
Nicaragua,	11 Apr. 1859, " XIV., 7 <i>Id.</i> , 586.
San Salvador,	2 Jan. 1858, " XVI., 7 <i>Id.</i> , 362.

² Treaty between the United States and Mexico, 1831, Art. XI., 8 *U. S. Stat. at L.*, 414.

Upon payment of one-third of their value, *Valin*, *Commentaire sur L'Ord.* liv. 3, tit. 9, art. 10 ; one-eighth, 6 *Geo. IV.*, ch. 49, § III. ; 13 & 14 *Vict.*, ch. 26, § V.

³ Within a year and a day after being reported at the Admiralty. *Valin*, above.

Salvage, &c., not allowed to public ships.

90. If property taken by pirates is brought in or found by a public ship of war, the deductions for salvage and expenses, allowed by the last article, are not to be made.

Treaty between the United States and Sweden, 1783, Art. XVII., 8 *U. S. Stat. at L.*, 70. Approved by. *Hautefeuille, Des Nations Neutres*, 4, p. 427.

TITLE III.

INTERCOURSE OF NATIONS.

CHAPTER XI. General Provisions.

XII. Public Ministers.

XIII. Consuls.

XIV. Commissioners.

CHAPTER XI.

GENERAL PROVISIONS.

- ARTICLE 91. Intercourse, by what agents conducted.
92. Minister's or consul's nation, and consul's or commissioner's residence defined.
93. Nations forbidden to entertain unofficial negotiations.
94. Public agents forbidden to make unofficial negotiations or communications.
95. Falsely assuming diplomatic powers, &c.
96. Right of legation, &c.
97. Obligation to receive public agents.
98. A nation may refuse to receive its own members.
99. Personal objections.
100. Rank or status.
101. Conditions may be imposed.
102. Conditional reception.
103. Inconsistent pretensions.
104. Several missions.
105. List of family, official and personal, to be furnished.
106. Secretary in case of absence, &c., of chief.
107. Insignia of office, and flag.
108. Exemption from liability for official acts.
109. Emergencies.
110. Duty to enforce exemption.
111. Interference with a dispatch to or from a public agent.

Intercourse, by what agents conducted.

91. The agents through whom the intercourse of nations is conducted are :

1. Public ministers ;
2. Consuls ; and,
3. Commissioners.

And they are herein designated as public agents.

Minister's or consul's nation, and consul's or commissioner's residence defined.

92. The terms "the nation of the minister or consul," or "the minister's or consul's nation," as used in this Code, mean the nation by authority of which he is appointed, without regard to his individual national character.

The terms "the nation or country of the consul's or commissioner's residence," mean the nation, or the state, province or colony of a nation, within the territory of which he is authorized to exercise his functions.

Nations forbidden to entertain unofficial negotiations.

93. No nation shall entertain negotiations' affecting its intercourse or relations with another, through or with any other persons than public agents duly accredited by one to the other ; or duly accredited by some third nation offering friendly offices, with the consent of both.¹

¹ It is said to be the settled practice of the United States to hold no private interviews with persons with whom it cannot hold official interviews. *Dana's Wheaton*, § 76, note 41, p. 131.

² The friendly offices of the representatives of third powers are invoked in case of war, for the protection of individuals, &c. ; and perhaps provision for similar offices during peace, in exigencies, such as absence, &c., should be made.

Public agents forbidden to make unofficial negotiations or communications.

94. Public agents must make no communication to the people of the nation to which they are accredited,

intended to affect the action of its government ;¹ nor enter into negotiation tending to affect international intercourse or relations, with any persons other than those duly authorized by the government.²

¹ The act of an envoy, in communicating with the people through the press, has been said to be a contempt of the government. 1 *Opinions of U. S. Attorney Generals*, 74.

² It is for each nation to determine, by its constitution and laws, the department of government in which the administration of its foreign affairs shall be vested.

Falsely assuming diplomatic powers, &c.

95. No person, other than a public agent mentioned in article 91, shall assume to represent a nation in intercourse with another nation, or enter upon negotiations with the government of any nation other than his own, intended to affect its intercourse or relations with another.

A violation of this article is a public offense.

A deputation, addressing, in the name of their own nation, a foreign sovereign, on the relations of peace and war between the two countries, are guilty of an offense against the law of nations. *Annual Register*, 1853, p. 11, cited in *Lawrence's Wheaton*, p. 373, note 115. Such acts are considered as offenses, also, by some systems of municipal law.

Right of legation, &c.

96. Any nation¹ may send to any other nation as many public agents of any class mentioned in article 91, as it may choose,² subject to the provisions of this Title.

¹ It is unnecessary to explain where this power rests in the case of confederacies, or vice-royalties ; because these provisions apply only to nations uniting in the Code.

² Several ministers may be sent by one nation to the same foreign court. *Lawrence's Wheaton*, p. 386.

This and the six following articles are suggested by the rules usually given respecting public ministers ; but are thought to be equally appropriate in their application to all classes of public agents.

Obligation to receive public agents.

97. Every nation is bound to receive public agents of other nations, except as otherwise specified in this Title, and to treat them as herein provided.

By the existing rule of international law, the duty to receive foreign ministers is of imperfect obligation. *Dana's Wheaton*, § 297 ; *Klüber*,

Droit des Gens, § 176, and note b; 2 *Phillimore's International Law*, 154; *Fiore, Nouveau Droit International*, vol. 2, p. 548. According to *Heffter, Droit International*, § 200, there is no obligation but that of courtesy.

But a general refusal to receive any envoy renders international intercourse impossible; and in the three following articles are enumerated the cases in which a refusal is allowable, between nations that are parties to this Code.

The duty to receive consuls is positively declared in many treaties, subject only to the right of a nation to exclude *all* consuls from particular places, where it may be inconvenient to receive the consuls of any nation.

A nation may refuse to receive its own members.

98. A nation may refuse to receive, as public agents, persons who are its own members, at the time of such refusal.

France refuses to receive her own citizens as ministers. *Klüber*, § 186, and note c. So do Sweden and the Netherlands.

Objection has been made to receiving as a minister one who was formerly a member of the nation, but has been naturalized by the nation sending him. *Klüber*, § 186, and note c. It has been suggested that in such case a special agreement should first be made. *Dana's Wheaton*, § 251, note 137. We do not, however, follow that suggestion. By the provisions in the Chapter on NATIONAL CHARACTER OF PERSONS, naturalization will effect an absolute and complete change of nationality.

Consuls are often chosen from among the members of the nation in which they are to reside; but it is understood to be the existing rule that a nation may refuse to receive any particular person. *Bluntschli, Droit International Codifié*, § 248. And it is believed that a uniform rule applicable to all agents of public intercourse, such as is suggested in this and the following articles, will be more convenient.

Personal objections.

99. A nation may refuse to receive, as public agent, any one who is personally objectionable,¹ on informing the government by which he is sent, that the refusal is for personal reasons; but the reasons need not be more particularly stated.²

¹ 2 *Phill. Int. Law*, 149. Several cases of refusal on personal grounds are mentioned in *Klüber*, § 187, note d; *Dana's Wheaton*, § 251, note 137.

² *Dana's Wheaton* (§ 210,) allows the refusal, if the motives are alleged. But the above rule seems to be sufficient.

Rank or status.

100. Mere social condition, or status, of a person

sent as public agent by one nation to another, is not a valid reason for personal objections, within the meaning of the last article.

Bluntschli, §§ 162 and 164, note. *Wheaton* (*Lawrence's Ed.*, p. 386) states that usage requires the interchange, in permanent missions, of persons of equal rank. It is submitted that this should not be recognized as a rule.

Conditions may be imposed.

101. A person whom the nation might refuse to receive as public agent, under article 98 or 99, may be received upon conditions,¹ to be accepted or rejected, as the nation sending him may determine.

Halleck's International Law, p. 185. *Bluntschli* (§§ 167, 168) says, propriety requires that the foreign nation should be previously notified of the name of the proposed envoy, and if no objection be made or question raised by the latter, as to the appropriateness of the choice, it may be inferred that there are none; and, after an envoy has been received, no objection can be made to his appointment for causes which existed or which might have been known, before the reception.

It is not thought necessary, however, to recognize such a restriction.

¹ The conditions are usually the waiver of immunities.

Conditional reception.

102. If no condition is expressed at or before the time of reception, the reception is unqualified, and the agent is then entitled to all the privileges of his office.

If received upon condition, the agent has all the privileges of his office not expressly excluded by the terms of his reception.

Inconsistent pretensions.

103. In the case of persons claiming powers inconsistent with the laws or policy of the nation to which they are sent, such nation may require their powers to be defined, and reduced to satisfactory limits.

Heffter, § 200; *Halleck*, p. 185.

Several missions.

104. The same person may be accredited to more than one nation at the same time;¹ but in such case any nation may for that reason refuse to receive him.²

¹ *Lawrence's Wheaton*, p. 386, and note 123.

² This qualification seems necessary for the case of unrecognized States; and others, where incompatibility of functions may arise.

List of family, official and personal, to be furnished.

105. Every public agent, on being received, must furnish to the government receiving him a list of the persons composing his family, personal or official,¹ or attached to his office, and must thereafter give the like notice of any change therein.²

The government may refuse to recognize them, or any of them, or annex conditions, for the same reasons and in the same manner as is provided in articles 98-104.

¹ "Suite" is defined in article 119.

² This article is suggested by the provision in the consular treaty between France and Austria, Dec. 11, 1866, (9 *De Clercq*, p. 669, Art. VI.) which requires consuls at the head of consular posts to give such list on their arrival. The time of recognition seems more appropriate than that of arrival.

Secretary in case of absence, &c., of chief.

106. Upon the recall, death, resignation or absence of a public agent, or his inability to discharge the duties of the office, the subordinate who becomes charged with the affairs of the office, and whose official character has previously been made known to the government,¹ as required by article 105, has, for the time being, the powers and immunities of a temporary minister,² or of his chief, if the chief be a consul³ or other agent, although not furnished with a formal letter of credence or act of permission as such.

¹ The previous communication of the official character is obviously a proper condition.

² For this rule, as to ministers, see *Lawrence's Wheaton*, p. 440, note; *Bluntschli*, § 180. Rank is not affected.

³ For this rule, as to consuls, see the convention between the United States and Italy, February 8, 1868, 15 *U. S. Stat. at Large*, (Tr.) 185, Art. VII. The treaty between France and Peru, March 9, 1861, Art. XLI., (8 *De Clercq*, 193,) provides, in reference to consuls, that the officer highest in rank at the consulate shall act *ad interim*.

Insignia of office, and flag.

107. A public agent having a fixed residence or place

for exercising his functions, may put over the outer door of his official residence or office the arms of his nation, with an inscription designating its character.

And he may raise the flag of his nation on such building,¹ or on any vessel where he is exercising his functions.²

¹ This article is suggested by the treaty between the United States and Italy, as to consuls. 15 *U. S. Stat. at L.*, (*Tr.*) 185, Art. V.

² The above treaty, however, does not allow the flag to be raised by a consul in the capital of either country when a legation is there.

The consular convention between France and Brazil, December 10, 1860, (8 *De Clercq*, 153,) gives the right of raising the flag only on days of public solemnities, national or religious. See also, the treaty of friendship, commerce and navigation between France and Peru, March 9, 1861, Art. XLIV., 8 *De Clercq*, 193.

To similar effect as the above is the consular convention between France and Austria, Dec. 11, 1866, (9 *De Clercq*, p. 669,) which gives, however, the right to raise the flag on the consular mansion, and on the vessel in the port in which they may be exercising their functions.

Exemption from liability for official acts.

108. A public agent is not subject to the jurisdiction of the nation, within the territory of which he resides or exercises his functions, for official acts done under the direction of the government of his nation.

Halleck (p. 243) states this rule as applicable to consuls. Perhaps it should be restricted to those agents who have been expressly received by the nation in which they exercise their functions. See *Guide Pratique des Consulats*, vol. 1, p. 10.

Emergencies.

109. The exemptions or immunities mentioned in this Title may be withdrawn in the case of an emergency affecting the existence of the nation.

Dana's Wheaton, § 227, note 129.

Duty to enforce exemption.

110. The nation within whose jurisdiction a public agent is entitled to enjoy privileges or immunities, is bound to enforce them, and to prevent and redress every violation thereof committed within the same.

This rule is drawn from the authorities applicable to ministers. *Heffter*, § 204.

Criminal punishment, however, cannot be inflicted, except as provided by the law of the place. *Heffter*, § 205, p. 383. Thus, in *Commonwealth v. De Longchamps*, 1 *Dallas' U. S. Supreme Ct. Rep.*, 116, the court refused to imprison the defendant for an assault upon a secretary, until his sovereign should declare that the reparation was satisfactory.

By the rule in force at present, this obligation is said to be imposed only upon the nation to which he is sent; (*Lawrence's Wheaton*, p. 421, note 141 :) although by courtesy a nation through which a minister is passing will usually extend protection.

Interference with a dispatch to or from a public agent.

111. Any person whatever willfully and without authority impeding the transmission or delivery, or opening, reading, copying or divulging the whole or any part, of the contents of any dispatch sent by or to a public agent, is guilty of a public offense.

CHAPTER XII.

PUBLIC MINISTERS.

SECTION I. Appointment and reception.

II. Rank.

III. Powers.

IV. Immunities.

SECTION I.

APPOINTMENT AND RECEPTION OF PUBLIC MINISTERS.

ARTICLE 112. Four classes of ministers.

113. Letters of credence.

114. Letters, how issued.

115. Power to act in a congress or conference.

116. Full power to negotiate treaty.

117. Notifying arrival.

118. Recognition of minister's nation by reception.

119. Official and personal family.

Four classes of ministers.

112. Public ministers are either :

1. Ambassadors ;¹
2. Envoys ;²
3. Resident ministers ; or,
4. Temporary ministers, otherwise called *chargés d'affaires*.³

Lawrence's Wheaton, p. 379 ; *Bluntschli, Dr. Intern. Codifié*, § 171 ; *Congress of Vienna*, 1815 ; of *Aix-la-Chapelle*, 1818.

¹ This class includes papal legates and nuncios. The distinction, stated in the books, that ambassadors represent the person of the sovereign by whom they are sent, while the other classes of ministers represent their principal only in respect to the particular business committed to their charge. (*Protocol of the Congress of Vienna*, Art. II.) seems now to amount to nothing more than saying that they are the highest class of public ministers. Dignities peculiar to their rank are matter of etiquette, not necessary to be defined in this Code.

² These include ministers plenipotentiary, envoys ordinary and extraordinary, and envoys ; also, the internuncios of the pope. *Bluntschli*, § 173, note.

³ *Vattel* says, that the secretary of the embassy (not that of the ambassador) having his commission from his sovereign, is a sort of public minister. But it is not thought necessary to recognize this as a fifth class.

Fiore (Nouv. Dr. Intern., vol. 2, p. 612) holds with some others to the opinion that consuls are a class of *diplomatic* officers, but it is rather a dispute about name than function.

Letters of credence.

113. A public minister, sent by one nation to another, must be furnished by his own government with a letter of credence, addressed as provided in article 114, and an authenticated copy thereof must be delivered to the government of the nation to which he is sent.

Lawrence's Wheaton, p. 388.

Letters, how issued.

114. Letters of credence are issued by, and addressed to, the sovereign or chief executive officer of the nation, for the ministers of the first three classes ; and by and to the minister, or other officer having charge of foreign affairs, for those of the fourth class.

Bluntschli, § 185 ; *Lawrence's Wheaton*, p. 388.

Power to act in a congress or conference.

115. A public minister, sent to a congress or conference, must be furnished with a letter of credence, or other documentary evidence of his powers, to be exchanged or deposited with those of the other members of the congress or conference.

Lawrence's Wheaton, p. 388.

Full power to negotiate treaty.

116. A public minister, authorized to conclude a treaty, must be furnished with written authority therefor, in addition to his letter of credence.

Lawrence's Wheaton, p. 443.

Notifying arrival.

117. A public minister, on arriving at his post, must notify his arrival to the minister, or other officer having charge of foreign affairs.

The mode of notification, and the subsequent ceremonies of audience, differ according to the class of the minister, and the usage of the government. *Lawrence's Wheaton*, p. 392; *Bluntschli*, §§ 188, 189.

Recognition of minister's nation by reception.

118. The reception of a public minister is a recognition of the government by which he is sent.

Sir J. Mackintosh's Works, p. 747, cited in *Lawrence, Commentaire sur Wheaton*, p. 196; *Bluntschli*, § 169.

Wheaton says, that for the purpose of avoiding recognition, diplomatic agents are frequently substituted, who have the powers and immunities of ministers, without the representative character or honors. Such were Messrs. Mason and Slidell, the messengers of the Confederacy, who were seized on board the *Trent*. *Lawrence's Ed.*, p. 377, note 118. But the rule stated in the text is the better supported by reason. There cannot be agents without a principal.

Official and personal family.

119. The persons actually employed by a public minister in aid of his diplomatic duties, or in his domestic service, constitute his family, official or personal.

The term "official family," as here used, is preferred to "*suite*."

Some of the authorities indicate that a permanent or indefinite employment is necessary, to entitle the employee to the immunities; but this seems too strict a rule. It would sometimes exclude bearers of dispatches and messengers.

SECTION II.

RANK OF PUBLIC MINISTERS.

ARTICLE 120. Classes.

121. Relation between courts.

Classes.

120. Public ministers take rank, between themselves, in each class, according to the date of the official notification, to the government to which they are sent, of their arrival at their post.

Protocol of the Congress of Vienna, 19 March, 1815, Art. IV., quoted in *Laurence's Wheaton*, p. 380, note. This rule is there qualified so as not to affect the precedence accorded to the representatives of the pope.

Relation between courts.

121. No distinction of rank among public ministers arises from consanguinity, or family, or political relations between their different sovereigns or nations.

Protocol of the Congress of Vienna, 1815, Art. VI.; *Wheaton, Elem. Int. Law*, pp. 380, 386.

SECTION III.

POWERS OF PUBLIC MINISTERS.

ARTICLE 122. Powers defined by instructions.

- 123. Issue of passports.
- 124. Authentication of documents.
- 125. Communications, when to be in writing.
- 126. Termination of powers.
- 127. Death.
- 128. Recall.
- 129. Contingent negotiation in case of death, deposition or abdication.
- 130. Suspension of powers pending recognition.
- 131. Withdrawal.
- 132. Dismissal.
- 133. Assigning reasons.
- 134. Preventing personal intercourse.
- 135. Ratification of old letter of credence.

Powers defined by instructions.

122. The powers of a public minister are such as are given him by his own nation¹ subject to the provisions of this Code.

The nation to which he is accredited cannot require him to disclose his instructions.

The ministers of all classes accredited to one government often unite in a collective capacity for acts of courtesy, and the expression of common opinion; but they have no authority except in their individual functions. *Bluntschli*, however, (§ 182, note,) regards the *corps diplomatique* as the germ of the future organization of the world.

Issue of passports.

123. A public minister may give passports to members of his own nation, but to no others.¹

It is not thought desirable that the system of passports should be retained, except to afford certificates of national character, and, therefore, none should be issued to foreigners even by leave or sufferance, as has been done. See *Lawrence's Wheaton*, p. 389, note 126.

¹ As provided in the articles on *Passports and Safe-Conducts may be given*, and *Effect of Passports*, in Section I., as to RIGHTS OF RESIDENCE, of Chapter XXV., entitled PERSONAL RIGHTS OF FOREIGNERS.

Authentication of documents.

124. Public ministers and their secretaries of legation may receive or authenticate, for use in their respective nations, such documents, besides those specially provided for by this Code, as they may be authorized to receive or authenticate by the laws and regulations of their nations respectively.

Communications, when to be in writing.

125. A minister, or other officer in charge of foreign affairs, may require a copy, to be left with him, of any document or written paper, the contents of which a public minister reads or otherwise communicates to him.

Dana's Wheaton, § 219, note 123. It may be thought better to provide that either party may require any official communication to be reduced to writing.

Termination of powers.

126. The powers of a public minister are terminated, either:

1. By death ;
2. If appointed for a fixed term, by the expiration of the term ;¹
3. If serving temporarily, by the resumption of duty by his chief, or by appointment of a new chief ;
4. If the only object of the mission was special, by its fulfillment or final failure ;
5. By recall by his own nation ;
6. By the death,² deposition,³ or abdication of the sovereign,⁴ by or to whose nation⁵ he is accredited ; to the extent provided in article 129, and no further ;
7. By a change in the dynasty or the form of government of either nation ;
8. By his voluntary withdrawal, as provided in article 131 ;
9. By his dismissal by the nation to which he is accredited, in the cases provided in article 132 ; or,
10. By his transfer from one class to another of those mentioned in article 112.

¹ In this and the next case, a formal recall is unnecessary.

² *Lawrence's Wheaton*, p. 429. *Bluntschli*, § 231, says, that death does not annul the letters of credence, although it is usual to renew them.

³ *Lawrence's Wheaton*, p. 430, note 145.

⁴ No such rule applies in case of the succession to the chief executive office of a republic. *Lawrence's Wheaton*, p. 430, note 145.

⁵ A change in the ministry of foreign affairs does not affect the powers of temporary ministers accredited to such ministry. *Bluntschli*, § 233.

Fiore, (*Nouv. Dr. Intern.*, vol. 2, p. 628,) says, that the powers terminate by nomination to other functions incompatible with those of minister ; but this should be left to be treated as a ground of dismissal.

Death.

127. On the death of a public minister, the secretary of his legation, or in the absence or inability of such secretary, the minister of some other nation should place seals upon his effects, for the benefit of those interested, and take charge of his body, for its interment or conveyance home.

In case of their failure to do so, the nation to which he is accredited must undertake these duties.

By the existing rule, the local authorities do not interfere except in case of necessity; *Halleck's Int. Law*, p. 235, § 34: and then only for the protection of the effects, &c. *Bluntschli*, § 240.

Recall.

128. When a nation recalls its public minister by a letter of recall, an authenticated copy thereof must be delivered to the authority¹ to which he was accredited.

Lawrence's Wheaton, p. 438. Letters of recall are not always sent, in case of recall on account of rupture of friendly relations. *Fiore, Nouv. Dr. Intern.*, vol. 2, p. 631.

¹ To the sovereign, or to the minister of foreign affairs. See Article 114.

Contingent negotiation in case of death, deposition or abdication.

129. In case of the death, deposition or abdication of the sovereign by or to whose nation a public minister is accredited, the powers of the minister to enter into new stipulations cease; but negotiations already commenced may be continued, subject to subsequent ratification or rejection.

This rule is from *Lawrence's Wheaton*, p. 433, extended so as to include the case of deposition.

Fiore, (*Nouv. Dr. Int.*, vol. 2, p. 629,) says, that it is only the ministers of the first two classes whose powers are suspended by the death of the sovereign. The *chargé d'affaires*, being accredited by the minister of foreign affairs, can continue his functions even after the death of the sovereign. But the true distinction should seem to be between the functions which are continuous in their nature, and those which are not continuous. The minister may still intervene for protection of his countrymen, and may issue passports and the like.

Suspension of powers pending recognition.

130. When the powers of a public minister are terminated by a change in the dynasty or form of government of the nation by or to which he is accredited, he may remain at his post until opportunity is allowed for determining the question of recognition of the new government; and in the meantime, he is entitled to the immunities of a public minister, if he assumes no powers.

Lawrence's Wheaton, p. 378, note 117; *Halleck*, p. 237, § 37. And see *Bluntschli*, § 230; *Dana's Wheaton*, § 209, note 121.

Withdrawal.

131. A public minister may at any time declare his mission terminated, by notifying his withdrawal to the authority¹ to which he was accredited.

He is responsible only to his own nation for a breach of duty or instructions in this respect.

¹ To the sovereign, or to the minister of foreign affairs. See Article 114.

Dismissal.

132. A nation may dismiss a public minister accredited to it by another nation :

1. When his nation has violated this Code, or any special compact ; or,

2. For any personal objection by reason of which the reception of a minister may be refused, according to articles 99 and 100.

Assigning reasons.

133. A nation dismissing a public minister must assign the reasons thereof to the nation by which he was sent.

If they are personal, it is sufficient to state the fact, without mentioning particulars, according to article 99.

Preventing personal intercourse.

134. Upon dismissing a public minister, a nation may, if its own safety appears to require it, forbid all intercourse with him.

Grotius, Bk. 2, c. 18, § 4; *Kent's Commentaries*, vol. 1, p. 39. Article 142 sufficiently provides for his safe return.

Ratification of old letter of credence.

135. If upon a termination of the powers of a public minister, in cases under article 126, he is authorized to continue as a minister to the same nation, whether in the same class of ministers or not, a formal notification that his letter of credence is ratified is equivalent to a new letter of credence.

The rule already applied in some cases, is in substance the same as that above stated.

SECTION IV.

IMMUNITIES OF PUBLIC MINISTERS.

ARTICLE 136. Right of passage.

- 137, 138. Passage during war.
- 139. Exemptions of person and property.
- 140. Duration of exemptions.
- 141, 142. Exceptions as to exemptions.
- 143. Dwelling-house.
- 144. Family, official and personal.
- 145. Servants.
- 146, 147. Waiver of privileges.
- 148. Property in trade.
- 149. Returning minister.
- 150. Domicil.
- 151. Jurisdiction of his own nation.
- 152. High crimes.
- 153. Arrest of criminal act.
- 154. Right to punish family.
- 155. Taxes.
- 156. Importations.
- 157. Bearers of dispatches.
- 158. Reparation for violence to property.

Right of passage.

136. Every public minister has the right¹ of passage, with his family, official and personal, through the territory of every nation with which his own nation is at peace, so far as may be necessary to enable him to reach his official destination; but the line of transit may be prescribed by such nation, at its option.²

¹ See 2 *Phill. Int. Law*, 186-189. The general principle was acknowledged, while the limitation here stated was insisted upon, by the government of France, in the case of Mr. Soule, in 1854. See Correspondence, *Lawrence's Wheaton*, p. 422, note; *Holbrook v. Henderson*, 4 *Sandford's (New York) Rep.*, 631.

² *Halleck, Intern. Law*, p. 234.

Passage during war.

137. If the nation through whose territory the right

of transit is desired be at war, the minister must first obtain from it a safe conduct or passport.

This rule is from *Halleck*, p. 232, extended so as to require the authority to be obtained even where his own nation is not one of the belligerents.

The same.

138. A public minister who enters the territory of a nation at war, without obtaining the authorization required by the last article, or departs from the line prescribed for his transit, may be arrested and conducted to its frontier.

Halleck, p. 234.

Exemptions of person and property.

139. The person¹ of a public minister within the territory of the nation to which he is sent, or within that through which in going or returning he passes in the usual course, and the movables in such territory belonging to him, or in his official charge,² are exempt from the jurisdiction of such nation, subject to the exceptions mentioned in this Title.

The formalities requisite for his unofficial acts are subject to the same rules as those of other persons.³

¹ Jurisdiction is excluded, though neither his person nor his personal property is touched by the suit. *Magdalena Co. v. Martin*, 2 *Ellis & Ellis' Rep.*, 94. The right of the minister of the Netherlands at Washington to decline to testify was admitted by the United States; and on their application to his government, the latter declined to instruct him to appear. *Dana's Wheaton*, § 225, note 125.

² *E. g.*, the archives of his mission. *Torladé v. Barrazo*, 1 *Miles' (Pennsylvania) Rep.*, 378; *Holbrook v. Henderson*, 4 *Sandford's (New York) Rep.*, 632.

³ It is proposed by this to abolish the existing rule that in transactions relating to his movables, (*Heffter*, *Droit Intern.*, § 42; *Klüber*, *Droit des Gens*, § 209,) or his personal rights or relations, a public minister is not bound to adopt the formalities required by any other nation than that by which he is accredited. 1 *Félix*, *Droit International Privé*, p. 416, no. 210.

Duration of exemptions.

140. The exemption to which a public minister is entitled in respect of his person, property and family, official and personal, commences from the time when

the nation from which the exemption is claimed has notice of his character,¹ and continues with his powers until his death,² or, in other cases, until a reasonable time has elapsed after his powers have terminated,³ except as provided in the next two articles.

¹ Thus, if he is a resident at the time of his appointment, his exemption dates from the time of the receipt of his credentials. *Kläber*, § 203, note f.

² *Attorney General v. Kent*, 1 *Hurlstone & Coltman's Rep.*, 12; *Magdalena Co. v. Martin*, 2 *Ellis & Ellis' Rep.*, 114, per Lord CAMPBELL, C. J..

³ In *Torladé v. Barrazo*, 1 *Miles' (Pennsylvania) Rep.*, 379, twenty-two days were considered a reasonable time. Some authorities, however, state that his personal property is not exempt after the termination of his powers. *Marten's Law of Nations*, Bk. VII., ch. 5, § 3, Cobbet's Translation, 1795.

Exceptions as to exemptions.

141. Upon a change in the dynasty or form of government, or the death, deposition or abdication of the sovereign of the minister's nation, and an exclusive recognition of the new government by the nation to which a public minister is accredited, the courts of such nation have jurisdiction to compel the delivery to his successor of such archives of his mission,¹ and other property in his official charge, as may be found within its territory.

¹ See *Torladé v. Barrazo*, 1 *Miles' (Pennsylvania) Rep.*, 378, where the court avoided a decision on this point.

The same.

142. The nation to which a public minister is accredited may fix a reasonable time from the termination of his powers, at the end of which the exemptions to which he is entitled shall cease.

Halleck, p. 235.

Dwelling-house.

143. The actual dwelling-house of a public minister is exempt from the jurisdiction of the nation to which he is sent,¹ but cannot be used as an asylum, except for the protection of members of his nation² against in-

vasions of rights secured to them by this Code, or by special compact, or for the protection of members of a nation on whose behalf his friendly offices are interposed.

¹ 2 *Phill. Intern. Law*, pp. 193, 210; *Lawrence's Wheaton*, p. 400; *United States v. Jeffers*, 4 *Cranch's U. S. Circuit Court Rep.*, p. 704. Other immovables of a minister are not exempt. 2 *Phill. Int. Law*, p. 192.

² 2 *Phill. Int. Law*, pp. 211-213. A crime committed in a minister's hotel, by a person not belonging to his family, official or personal, although by a member of his nation, is within the jurisdiction of the nation to which he is sent. *Case of Mitchencoff*, X. *Sol. Journ.*, 56. The right of asylum is denied in general terms by 2 *Felix, Dr. Int. Privé*, p. 293, § 576; *Heffter*, § 63.

Perhaps the office should be also included.

Family, official and personal.

144. The members of the family, official and personal, of a public minister, are exempt from the jurisdiction of the nation to which he is sent, or through the territory of which they pass in company with him, to the same extent as is his person.

Servants.

145. The last article does not extend to a person taken into the service of the minister, and belonging to a nation by the law of which such person is incapable of making such contract of service, or prohibited from making it.

9 *Opinions of U. S. Attorneys-General*, 7. The absence of such a provision would enable the minister to employ "any discontented wife, . . . rebellious child, . . . the soldiers of a garrison, . . . the sailors from a ship, . . . or a felon."

Waiver of privileges.

146. The privileges of a public minister, and of such of his official family as are appointed by the direct action of the government which he represents, cannot be waived by him, except so far as to submit to the jurisdiction of a foreign nation in matters not involving an interference with his person or personal property.

Taylor v. Best, 14 *Common Bench Rep.*, 487; 2 *Phill. Int. Law*, 197; *United States v. Benner*, *Baldwin's Rep.*, 234.

The same.

147. The privileges of the family, official and personal, of a public minister cannot be waived by any of

them; but may be waived by him,¹ except as otherwise declared in article 146.

² *Phill. Int. Law*, 196.

¹ *1 Fœlix, Dr. Intern. Privé*, p. 417, note b.

Property in trade.

148. The property of any member of the family of a public minister, invested in trade, is subject to the jurisdiction of the nation within whose territory it is situated.

This exception to the general rule of immunity does not extend to ministers themselves. See *Taylor v. Best*, 14 *Common Bench Rep.*, 487.

Returning minister.

149. The nation of a public minister cannot deprive him of his privileges as a returning minister, without his consent.

In *Torladé v. Barrazo*, 1 *Miles' (Pennsylvania) Rep.*, 366, 385, it was held, that the institution of an action of trover to recover the archives of the mission, by the *chargé* of a newly recognized government against his predecessor, did not *ipso facto* divest the defendant of such privilege.

Domicil.

150. The domicil of a public minister is not changed by his appointment,¹ or by any of his acts done while his powers continue.²

¹ This rule applies to the case of a person domiciled at the time of his appointment in the territory of the nation to which he is accredited. *Westlake, Private Intern. Law*, § 47; *Attorney-General v. Kent*, 1 *Hurlstone & Coltman's Rep.*, 12.

² *Fœlix, Dr. Int. Privé*, vol. I., p. 418, § 211; *Heath v. Samson*, 14 *Beavan's Rep.*, 441.

Jurisdiction of his own nation.

151. No person, by reason of being a public minister, or a member of the family of a public minister, is exempt from the jurisdiction of the nation of which he is a member, except to the extent of freedom from arrest on civil process.

High crimes.

152. In case of the commission of a high crime by a public minister, or by one of his family, in a foreign

country, the nation in whose territory the offender is found, may compel him to leave it ; and may use any degree of force necessary to secure his departure.

Lawrence's Wheaton, p. 395 ; 2 *Felix, Dr. Int. Privé*, § 576, p. 293 ; *Heffter*, § 206.

Arrest of criminal act.

153. Any person or nation may arrest any act of criminal violence on the part of a public minister, or any of his family ; and may use any force necessary to prevent the commission of such an act.

2 *Phill. Int. Law*, p. 185 ; *United States v. Liddle*, 2 *Washington's U. S. Circuit Court Rep.*, p. 205 ; *United States v. Ortego*, 4 *Id.*, 537 ; *Lawrence's Wheaton*, p. 395.

Right to punish family.

154. A public minister has no power to inflict criminal punishment upon any of his family ; but, with the consent of the nation in whose territory he is, he may use any necessary force to send home any of them charged with crime.

See *Halleck*, p. 220.

Taxes.

155. It is the duty of a public minister to pay taxes and assessments imposed upon his property for its benefit ;¹ but this duty cannot be enforced by any nation whatever, by means of any process against his person,² nor by the nation to which he is sent, by means of any process against such of his property as is exempted from its jurisdiction.³

¹ Recent treaties give *consuls* a more liberal exemption. See Prelim-Note to Section IV. of next Chapter.

² 1 *Twiss, Law of Nations*, § 203.

³ *Ib.* ; *Klüber*, § 205.

Importations.

156. A public minister is entitled to import articles for the use of himself and his family, official and personal, to a reasonable extent, free of duty.

See *Lawrence's Wheaton*, p. 416 ; *Attorney-General v. Thornton*, 1 *McLelland's Rep.*, pp. 600, 607.

It is sometimes said, that he may be required in the first instance to pay the duty, but that it cannot be enforced by seizure or legal process. This, however, does not seem reasonable.

Bearers of dispatches.

157. Bearers of dispatches to or from a public minister, provided with passports or other evidence of their character,¹ have the same privileges as members of his family, accompanying him, for such length of time as may be necessary to enable them to perform their duties as such.²

¹ *Heffter*, § 204.

² *Lawrence's Wheaton*, p. 417 ; 2 *Phill. Int. Law*, 196, § 186.

Reparation for violence to property.

158. The nation within whose jurisdiction an act of violence is committed upon the exempt property of a public minister, is bound to make reparation therefor, although done by a person who was at the time ignorant of its character.

In *United States v. Hand*, 2 *Washington's U. S. Circuit Ct. Rep.*, p. 435, it was held, that an attack upon a minister's house is not a crime by the law of nations, unless the aggressor knew that it was the domicile of the minister. Such ignorance would be no excuse for an assault upon his person. *United States v. Liddle*, 2 *Id.*, 210 ; *United States v. Ortega*, 4 *Id.*, 537 ; *United States v. Benner*, 1 *Baldwin's Rep.*, 234. To the contrary, *Heffter*, § 204 ; *Vattel's Law of Nations*, Bk. IV., ch. XVII., § 82.

CHAPTER XIII.

CONSULS.

SECTION I. General provisions.

II. Authorization.

III. Powers.

IV. Immunities.

SECTION I.

GENERAL PROVISIONS.

ARTICLE 159. "Consul" defined.

160. Classes of consuls.

"Consul" defined.

159. A consul is an agent appointed, by authority of one nation, to reside within the territory of another nation, for the purpose of facilitating commerce. The word "consul," as used in this Code, designates any person empowered to exercise, for the time being, the consular functions.

Classes of consuls.

160. The various classes of consuls, and their relative rank and powers, are fixed by their respective nations.

It is not thought necessary to define in this Code a fixed scheme of classification for consular officers, any further than the distinctions between principal and subordinate officers, and between temporary and permanent officers, are recognized in the following Articles:

The consular body in France is composed of: 1. Consuls-General; 2. Consuls of the first and second class; 3. Consular pupils, (*élèves consuls*.) See Report of Mr. Bigelow, Feb., 1864, quoted in *United States Consular Regulations*, (1868,) p. 179, note.

By the *United States Consular Regulations*, (1870,) Art. I., ¶ 1, the Consular service of the United States consists of the following officers: Agents and Consuls General; Consuls General; Vice-Consuls General;

Deputy Consuls General; Consuls; Vice-Consuls; Deputy Consuls; Consular Agents; Commercial Agents; Vice-Commercial Agents; Consular Clerks; and office clerks.

Agents and Consuls General, Consuls General, Consuls and Commercial Agents, are full, principal and permanent Consular Officers, as distinguished from subordinates and substitutes.

Deputy Consuls and Consular Agents are Consular Officers subordinate to such principals, exercising the powers and performing the duties within the limits of their Consulates,—the former at the same ports or places, and the latter at ports or places different from those at which such principals are located.

Vice-Consuls General, Vice-Consuls and Vice-Commercial Agents are Consular Officers who are substituted temporarily to fill the places of Consuls-General, Consuls or Commercial Agents, when they are temporarily absent or relieved from duty.

Consular Clerks are recognized by the Act of Congress, June 20, 1864, 13 *U. S. Stat. at L.*, p. 139, § 2. The class of Office Clerks is authorized only in unsalaried Consulates.

The class of Consular Pupils is recognized by the consular convention between the United States and France, Feb. 23, 1853, 10 *U. S. Stat. at L.*, (*Tr.*) 114, 121; by which convention, and by that between France and Brazil, Dec. 10, 1860, (8 *De Clercq*, 153, Art. II.,) it is provided that Consular pupils shall enjoy the same privileges and immunities of the person as Consuls, &c.

Commercial Agents are peculiar to the service of the United States, and seem to be employed in lieu of Consuls, either for reasons of convenience in the formalities of appointment; or, to avoid the necessity of recognizing a *de facto* government, by requesting an *exequatur*. *U. S. Consular Regulations*, (1868,) pp. 156–8.

It is proposed by Article 169, to confine the immunities to Consuls holding an *exequatur*.

“By whatever name,” says *Halleck*, (*Intern. Law*, p. 241, § 3,) these officers are designated, their powers and duties in Christian countries are essentially the same.”

SECTION II.

AUTHORIZATION OF CONSULS.

- ARTICLE 161. Duty of nations to receive consuls.
 162. Exclusion of consuls.
 163. Forbidding consuls to engage in business.
 164. Appointment of subordinates.
 165. Commission required.
 166. Formal act of permission required.
 167. Exception as to temporary consuls.
 168. Notifying appointment to local authorities.
 169. Notifying permission.

Duty of nations to receive consuls.

161. Any nation may appoint consuls in all the ports, cities and places of any other nation; subject to the right of the latter to exclude the consuls of all nations whatever¹ from places where it may not be convenient to recognize such officers.²

Convention between the United States and Italy, Feb. 8, 1868, 15 *U. S. Stat. at L., (Tr.)*, 185, Art. I.; and other treaties of the United States.

Consular convention between France and Austria, Dec. 11, 1866, 9 *De Clercq*, 669, Art. I.

Treaty of friendship, commerce and navigation between France and Honduras, Feb. 22, 1856, Art. XIX., 7 *De Clercq*, p. 10.

New Granada, May 15, 1856, " XXIII., 7 *Id.*, 102.

And other treaties of France.

¹ By this provision, the nations uniting in this Code will not be excluded from any ports in other such nations to which consuls from any nations, whether parties to the Code or not, are admitted. This is the principle of the treaties.

² Exclusion in case of war is provided for in Book Second of this Code.

Exclusion of consuls.

162. A nation may withdraw its permission from the consuls of all nations whatever, at any place, upon communicating the reasons for so doing to the nations parties to this Code, whose consuls are thereby excluded.

Suggested by the treaty of friendship, commerce and navigation between France and Peru, March 9, 1861, Art. XXX., 8 *De Clercq*, 193.

Forbidding consuls to engage in business.

163. A nation may at any time forbid consuls received by it to engage in business.

The French law forbids the consuls of France to carry on any business, and it seems proper to reserve a right to a nation receiving consuls to impose similar restrictions. *Guide Pratique des Consulats*, vol. 1, p. 66.

Appointment of subordinates.

164. A nation may authorize its consuls,¹ resident within the territory of another nation, or its public ministers² accredited thereto, to appoint vice-consuls, and other subordinate or temporary consular officers, and to remove the same.³

¹ Convention between the United States and

France, Feb. 23, 1853, Art. V., 10 *U. S. Stat. at L.*, (Tr.), 114.

Italy, Feb. 8, 1868, " VIII., 15 *Id.*, (Tr.), 185.

Belgium, Dec. 5, 1868, " VIII., *U. S. Cons. Rég.*, (1870,) ¶ 500.

Consular convention between France and

Austria, Dec. 11, 1866, Art. VII., 9 *De Clercq*, p. 669.

Portugal, July 11, 1866, " IV., 9 *Id.*, 582.

² Treaty of friendship, commerce and navigation between France and Peru, March 9, 1861, 8 *De Clercq*, 193; *Instructions to Diplomatic Agents of United States*, Art. XXIV.

³ The power of removal is not found to be expressly sanctioned in the books; but it seems proper that the tenure of such subordinate officers should be subject to the pleasure of the appointing power.

Commission required.

165. A consul must produce a suitable commission from the authority by which he is appointed.

² *Phillimore, Intern. Law*, pp. 240, 241.

The commissions of vice-consuls and consular agents, appointed by a consul or consul-general, are issued by the latter, according to the treaty between the United States and Italy, Feb. 8, 1868, 15 *U. S. Stat. at L.*, (Tr.), 185, Art. VIII.

Formal act of permission required.

166. A consul can perform no official act until he has received¹ from the nation of his residence a formal act of permission.² Such permission, when issued, must be free of charge.³

¹ *Halleck, Int. Law*, p. 242, § 4; *Bluntschli, Droit Int. Cod.*, § 246, note.

Treaty between the United States and Honduras, July 4, 1864, 13 *U. S. Stat. at L.*, 699, Art. X. *The United States Consular Regulations*, (1868.)

pp. 189, 190, on this point, sanction his acting as commercial agent, by consent of the local authorities, before receipt of his *exequatur*.

² *Exequatur*. 2 *Phill. Int. Law*, 241. This is in various forms in different countries. *Lawrence's Wheaton*, p. 423, note 143.

The more common form of *exequatur* in use in France, England, Spain, Italy, the United States, Brazil, &c., is letters patent signed by the executive head of the nation, and countersigned by the minister of foreign affairs. In other countries, as in Russia and Denmark, the consul simply receives notice that he is recognized, and that the necessary orders have been given to the local authorities at his residence. In Austria, *exequatur* is simply written upon his commission, and authenticated by the Emperor's seal. *Guide Pratique des Consulats*, vol. 1, p. 134.

The *exequaturs* of French consuls are asked for and sent to their destination by the French minister accredited to the nation of the consul's residence. *Guide Pr. des Cons.*, vol. 1, p. 135.

³ By the general usage, *exequaturs* are issued free of charge. They are required to be furnished free of charge, by the treaty between the United States and

Italy, Feb. 8, 1868, Art. II., 15 *U. S. Stat. at Large*, (Tr.) 185.

Denmark, April 26, 1826, " IX., 8 *Id.*, 342.

France, Feb. 23, 1853, " I., 10 *Id.*, (Tr.) 115. See 8 *Id.*, 106.

Belgium, Dec. 5, 1868, " II., *U. S. Cons. Reg.*, (1870,) ¶ 500.

New Granada, May 5, 1850, " II., 10 *U. S. Stat. at L.*, 900.

Portugal imposes the same charge as is required by the nation of the consul in question. England, Italy, Spain and Brazil impose charges ranging from forty to four hundred and fifty francs. *Guide Pr. des Cons.*, vol. 1, p. 138.

Exception as to temporary consuls.

167. The last two articles do not apply to subordinate officers temporarily acting in the cases authorized by article 106.

The French rule requires an *exequatur* for the consular agents commissioned by consuls, but not for consular pupils, chancellors, interpreters, clerks, or other secondary officers, nor for temporary incumbents discharging the functions of the office during vacancy. *Guide Pratique des Consulats*, vol. 1, p. 137.

Notifying appointment to local authorities.

168. A consul,¹ on arriving at his post or receiving his commission there, must notify his appointment to the authorities of the city, port or place constituting his district.

¹ The appointment of a deputy consul or consular agent must be notified to the local authorities of the place where he is to act. Without their recognition of his appointment, it would be improper for a deputy-

consul to communicate officially with them. *United States Consular Regulations*, (1868,) p. 154.

Notifying permission.

169. A consul receiving a formal act of permission, must notify the same to the authorities mentioned in the last article.¹

From the time of such notification only, he is entitled to the immunities provided in this Chapter.²

¹ The treaty of friendship, commerce and navigation between France and Peru, March 9, 1861, Art. XXX., (8 *De Clercq*, 193,) requires that consuls, vice-consuls, or simple consular agents, must also notify their appointment to the local authorities of the place of their *exequatur*. It is the usage of some governments to give this notice to the local authorities themselves, so that the consul is not charged with the duty. *Guide Pr. des Cons.*, vol. 1, p. 135.

² On the exhibition of the *exequatur*, consuls shall enjoy the rights, prerogatives and immunities which are granted. Convention between the United States and Italy, Feb. 8, 1868, 15 *U. S. Stat. at Large*, 185, Art. II.

SECTION III.

POWERS OF CONSULS.

ARTICLE 170. Powers conferred or defined by this Code.

- 171. Protection of members of friendly nation.
- 172. Non-contentious jurisdiction.
- 173. Other powers may be conferred.
- 174. Certified copies of consular acts.
- 175. Authority presumed.
- 176. Protection of rights, and complaints against wrongs.
- 177. Diplomatic character.
- 178. Termination of powers.
- 179. Powers not terminated by change of government.

Powers conferred or defined by this Code.

170. A consul has power :

1. In reference to deserters, in the cases and to the extent mentioned in Section II. respecting EXTRADITION OF DESERTERS, of Chapter XVIII., entitled EXTRADITION ;

2. In reference to the administration of estates, in the

cases and to the extent mentioned in Chapter XXVI., entitled RIGHTS OF PROPERTY ;

3. In reference to wrecks, in the cases and to the extent mentioned in Chapter XXVII., entitled WRECKS ;

4. In reference to marriage, in the cases and to the extent mentioned in the Chapter entitled MARRIAGE, of the Title respecting THE CONDITION OF PERSONS, in Part V., concerning PRIVATE RIGHTS OF PERSONS ;

5. In reference to the sale of ships and adjustment of average, in the cases and to the extent mentioned in the article entitled *Authorizing Sale of Wrecked Property*, in Chapter XXVII., concerning WRECKS, and in the article respecting *Consular Power*, in Chapter XXXIV., entitled GENERAL AVERAGE ;

6. In reference to judicial proceedings affecting members of his nation, in the cases and to the extent mentioned in the article respecting *Power of consuls to appear for members of his nation*, in the Title concerning JUDICIAL POWER, of Part VI., entitled ADMINISTRATION OF JUSTICE ; and,

7. In reference to controversies, order and discipline on board ship, in the cases and to the extent mentioned in the article respecting *Judicial power of consuls*, in the Title concerning JUDICIAL POWER, of Part VI., entitled ADMINISTRATION OF JUSTICE.

Protection of members of friendly nation.

171. A consul may exercise the powers mentioned in the last article, for the protection of the rights of person and property of members of any friendly nation whatever, which has no public agent at the same place.

Guide Pratique des Consulats, vol. 1, p. 376.

The power does not extend to ordinary notarial acts.

Non-contentious jurisdiction.

172. A consul has power, subject to such qualifications as may be contained in the laws or instructions of his government, to take and authenticate, at any place within his district :

1. Affidavits and depositions by any inmate of a ship

of his nation, or by any member of his nation ; and affidavits and depositions by any person whatever, affecting the interests of a member of his nation ;¹

2. Contracts, transfers, or other instruments to which a member or domiciled resident² of his nation is a party ;

3. Wills made by members of his nation, or which, by the provisions of this Code, may be made according to the law of such nation ;

4. Contracts and transactions by or between any parties whatever, which relate to property situated or transactions to be had within the jurisdiction of the consul's nation ;

5. Protests, declarations, and other notarial acts affecting his nation, or members, or domiciled residents thereof, such as a notary public within his nation may perform ;³ and also,

6. To execute commissions,⁴ issued out of the courts of his nation, for taking the testimony of witnesses within his district ; and for this purpose he shall have the right to call upon the local authorities of his district to compel the attendance of witnesses and their depositions.

The first four subdivisions are suggested by treaties, of which the following will serve as examples. The provision in the treaty between the United States and Italy, on this subject, (15 *U. S. Stat. at L.*, (Tr.) 185, Art. X.,) is to the following effect :

Consuls-general, consuls, vice-consuls and consular agents may take, at their offices, at their private residences, residence of the parties, or on board ship, the depositions of the captains and crews of vessels of their own country, of passengers on board of them, and of any other citizen or subject of their nation. They may also receive, at their offices, conformably to the laws and regulations of their country, all contracts between the citizens and subjects of their country, and the citizens, subjects, or other inhabitants of the country where they reside, and even all contracts between the latter, provided they relate to property situated or to business to be transacted in the territory of the nation to which said consular officer may belong.

Article VII. of the consular convention between France and Portugal, July 11, 1866, (9 *De Clercq*, 582,) provides that ;

Consuls and their deputies may take, at the consulate, or at the residence of the parties, or on board vessels, declarations and other acts

which the masters, crew and servants, passengers and members of their nation wish to make or perform, including testaments, and all other notarial acts and contracts of every nature.

It also provides, that such acts shall be drawn up in the form required by the laws of the state of which the consul is a member, subject, however, to compliance with all the formalities required by the law of the country where the act is to receive its execution ; while, if the act has for its object a transaction affecting movables situated in the country where the consul resides, it ought to be drawn up in the forms required and according to the provisions of the law of that country.

By the consular convention between France and Austria, 11 December, 1866, (9 *De Clercq*, p. 669, Art. IX.,) the acts and transactions which consuls may thus take are defined somewhat differently, as including declarations which masters of vessels, &c., and members of their country wish to make ; also all testamentary dispositions by members of their nation, and all other acts of civil right which concern them ; also simple acts conventional between one or more of their own nationality and other persons of the country in which they reside.

The consular convention between France and Brazil, December 10, 1860, (8 *De Clercq*, 153, Art. VI.,) provides, that when these transactions relate to real property situated within the country, a competent notary public shall be called in to unite in the authentication, and to sign the same together with the clerk or consular agent, in order to render the act valid. See *United States Consular Regulations*, (1870,) ¶ 33, and treaties in Appendix No. 1.

¹ *United States Consular Regulations*, (1870,) ¶ 238.

² Since the law of the domicile may sometimes apply to the transaction, the rule should be extended to include the acts of domiciled residents.

³ *United States Consular Regulations*, (1868,) p. 280.

⁴ It is stated in the *United States Consular Regulations*, (1870,) ¶ 308, that " in such cases the consular officer does not act in his quality of an Agent of the Federal Government, but simply as a citizen of the United States whose local position and character render him available to his fellow citizens for such services as might have been rendered by a private individual."

This method of taking depositions, in a foreign country, has always been familiar practice in the courts of Admiralty ; and it seems proper to extend the power to all courts authorized by the consul's nation.

Some of the States of the American Union have made provision by law for the taking of depositions, to be used in suits pending in other States by bringing the deponent within the operation of their own statute against *perjury* ; and national comity seems to require the enactment of similar provisions in all countries.

Other powers may be conferred.

173. A nation may authorize its consuls :

1. To issue passports¹ to its own members, but to no others ;

2. To sanction and verify the emancipation of minors ;² and,

3. To do any other act consistent with the provisions of this Code, or special compact, for the facilitation of commerce ; the promotion of the lawful interests of his nation, and those of its members or domiciled residents ; and the protection of property bearing its national character ; subject, however, to the control of the nation in which the consul resides.

¹ As provided in the articles on *Passports and Safe-conducts*, and *Effect of Passports*, in Section I., as to RIGHTS OF RESIDENCE, of Chapter XXV., entitled PERSONAL RIGHTS OF FOREIGNERS.

By the American rule, this power is not exercised by consuls, except in the absence of a public minister. And this comports with the original usage. *Halleck*, p. 252, § 15. *Bluntschli*, however, (§ 251, note,) thinks the consul the most appropriate of all officers to be vested with the power.

² *Bluntschli*, § 266.

Certified copies of consular acts.

174. A copy of any instrument which was made or authenticated by virtue of the consular powers, when certified¹ to be a copy by the consul, under his official seal, is admissible before all tribunals and officers as sufficient primary² evidence of the original.

Translations into the language of the nation of the consul's residence³ of any such instruments, or of official documents of his own nation, of every nature, certified in like manner to be translations, are in like manner admissible within the nation of his residence, and with the same effect.

¹ Consular convention between France and

Portugal, July 11, 1866, Art. VII., 9 *De Clercq*, p. 582.

Austria, Dec. 11, 1866, " IX., 9 *Id.*, 669.

And other French treaties.

² The consular convention between France and Portugal, July 11, 1866, (9 *De Clercq*, p. 582, Art. IV.,) and the treaty between the United States and Italy, (15 *U. S. Stat. at L.*, (*Tr.*,) 185,) make such certified copies evidence *equally* with the originals.

See, also, treaty of friendship, commerce and navigation between France

and Peru, March 9, 1861, Art. XXXIX., 8 *De Clercq*, 193; and the consular convention between France and Brazil, December 10, 1860, 8 *De Clercq*, p. 153, Art. VI.

The French treaties contain a provision, that in case of doubt arising as to the authenticity of a certified copy of such transaction, the consular officer must permit its comparison with the original, on the request of any person interested, and allow him to be present at such comparison.

³ By the treaty between the United States and Belgium, December 5, 1868, Art. IX., (*U. S. Cons. Reg.*, (1870.) ¶ 500,) the *original* and *copies* of such official documents, when duly authenticated, are made receivable as legal documents in the courts of justice of each of the countries. But it does not seem advisable to extend the rule so far.

Authority presumed.

175. Consular acts shall be presumed to be authorized by the instructions of the consuls, until the contrary appears.

Protection of rights, and complaints against wrongs.

176. A consul may apply to the authorities, whether judicial or executive, within his district, upon any infraction of the provisions of this Code, or special compact between the two nations, affecting his nation on a subject within the scope of his powers;¹ or affecting its members or domiciled residents;² or for the purpose of protecting the interests of such nation or persons.

If protection and redress cannot be thus obtained, and there is no public minister of such nation accredited to the government of the country, whether a nation or a colony or transmarine province,³ in which he resides, he may for the same purposes address such government directly.

Convention or treaty between the United States and Italy, February 8, 1868, 15 *U. S. Stat. at L.*, (*Tr.*), 185, Art. IX.

See *United States Consular Regulations*, (1870.) ¶ 31, and treaties in Appendix No. 1.

Consular convention between France and

Austria, Dec. 11, 1866, Art. VIII., 9 *De Clercq*, p. 669.

Brazil, Dec. 10, 1860, " IV., 8 *Id.*, p. 153.

Portugal, July 11, 1866, " VI., 9 *Id.*, p. 582.

The two latter contain a further provision, that the consuls shall have the right to take all steps which they may judge necessary to obtain full and prompt justice.

See, also, treaty of friendship, commerce and navigation between France and Peru, March 9, 1861, 8 *De Clercq*, 193, Art. XL.

¹ He has not general power to vindicate the prerogatives of his nation ; *e. g.*, to interpose a claim on its behalf in a court of prize, for a violation of its neutral territory. *The Anne*, 3 *Wheaton's U. S. Supreme Ct. Rep.*, p. 435.

² He may intervene in court for the protection of the interests of members of his nation, without special authority. *Bello Corrunnes*, 6 *Wheaton's U. S. Sup. Ct. Rep.*, 152 ; *London Packet*, 1 *Mason's U. S. Circ. Ct. Rep.*, 14 ; *Robson v. The Huntress*, 2 *Wallace Jr.'s U. S. Circ. Ct. Rep.*, 59.

³ This right to address the governor of a colony or transmarine province, is authorized by treaty between the United States and the great pashalics of the Turkish empire ; and by a recent treaty between the United States and the Netherlands, Aug. 26, 1852, 10 *U. S. Stat. at Large*, (Tr.), 66. And an extension of the rule to other European nations is suggested in *United States Consular Regulations*, (1868,) pp. 35, 36.

Apart from such a rule as this, the consul, in case of grave difficulties arising between him and any authorities of the nation of his residence, is limited to protesting, and should meanwhile remain in his ordinary functions, and await instructions from his government. *Guide Pratique des Consuls*, vol. 1, p. 149.

Diplomatic character.

177. A consul has no other diplomatic powers than those mentioned in this Section.

United States Consular Regulations, (1870,) pp. 147, 148 ; *Halleck*, p. 242, § 5 ; *The Anne*, 3 *Wheaton's U. S. Supreme Ct. Rep.*, 435.

By the *United States Instructions to Diplomatic Agents*, (§ 23,) consuls are under the direction of the minister or *chargé d'affaires* of the United States, in the country where they respectively reside ; and in the transaction of their official duties they can only address the government of that country through such officer. Several treaties, however, recognize the right to address the government directly in some cases. See note 3, to the last article.

Bluntschli, (§ 250,) regards consuls as diplomatic agents when charged with watching the execution of commercial treaties, or with reporting on the state of the country where they reside, &c., &c.

Termination of powers.

178. The powers of a consul are terminated, either :

1. By his death ;
2. If appointed for a fixed term, by the expiration of the term ;
3. If serving temporarily, by the resumption of duty by his chief, or by appointment of a new chief ;
4. By the revocation of his appointment by the na-

tion or authority by which it was made, and notice thereof to the consul, to the nation of his residence, and to the local authorities ;

5. By his voluntary withdrawal at any time, and notice thereof to the nation of his residence, and to the local authorities ; or,

6. By the revocation of the permission granted by such nation, and notice thereof to the consul, and to his nation.¹

¹ If the reasons are personal, and for which permission to act might have been refused, according to Article 99, it is sufficient to state the fact, without mentioning particulars.

Treaty or Convention between the United States and

France, February 23, 1853, Art. I., 10 *U. S. Stat. at L.*, 992.

The Netherlands, January 22, 1855, " III., 10 *Id.*, 1150.

New Granada, May 4, 1850, " II., 10 *Id.*, 900.

And see note to Article 185.

Exclusion in case of war is provided for in Book Second of this Code.

Powers not terminated by change of government.

179. Notwithstanding a change in the government of either nation, or a cessation of diplomatic intercourse,¹ the powers of a consul continue until revoked as provided in the last article.

¹ See *Guide Pr. des Cons.*, v. 1, p. 149.

¹ Consuls not being representatives of the nation, their functions may be continued in such cases.

SECTION IV.

IMMUNITIES OF CONSULS.

As to their immunities generally, consuls may be considered as of three classes :

1. Those who neither owe allegiance to, nor have a domicile in, the nation of their residence ;

2. Those who do not owe allegiance to, but have a domicile in, such nation ; the existence of a domicile being indicated either by previous voluntary residence, or by engaging in trade or holding property ; and,

3. Those who both owe allegiance to, and have a domicile in, such nation.

Halleck, without defining these classes so precisely as to avoid ambiguity in some cases, states the existing doctrine of exemption as follows :

Those who owe no allegiance, hold no real property, engage in no business, and have no domicile in the country, have the personal exemptions and disabilities of aliens who are mere sojourners.

Those who hold real estate, engage in business, and have a fixed residence, are considered as foreigners domiciled; and the consular privileges do not extend to their property or trade so as to change its national character.

Those who owe allegiance can claim no exemptions enjoyed by others in virtue of alienage, but are entitled to those which pertain to the office and are necessary for the performance of its duties, unless they are excluded by conditions imposed in the *exequatur*.

In view of this classification, and the fact that the ground of consular immunity is simply the facilitation of the consular functions, the following provisions are framed to prescribe an uniform rule of personal immunities in whatever can affect the exercise of consular functions, subject only to such exemptions as may be created by the conditions imposed in the *exequatur*; while, on the other hand, in all that does *not* hinder the exercise of consular functions, such as taxation, searches of papers not belonging to the affairs of the consulate, attendance as witness within a convenient distance, consuls, of whatever class, are left to the rules applicable to their private *status*, whether that of transient foreigners, of domiciled foreigners, of property owners and traders, or of members owing allegiance.

This is, substantially, the doctrine which was declared by Art. XVI. of the treaty between the United States and Sardinia, (1838,) 8 *U. S. Stat. at L.*, p. 518.

Larger immunities have been secured by special compact in the case of non-Christian powers. Some of the earlier treaties exempted consuls from payment of duties on goods brought in for use of their houses and families. Treaty between the United States and Algiers, 1795, 1815 and 1816, 8 *U. S. Stat. at L.*, 136, 227, and 247.

The usual provision of the treaties is to the effect that if consuls exercise commerce, they shall be subjected to the same laws and usages to which private individuals of their nation are subject in the same place.

Treaty between the United States and

Hanover,	(1840,)	Art. VI., 8 <i>U. S. Stat. at L.</i> , 556.
Hanover,	(1846.)	" IX., 9 <i>Id.</i> , (<i>Tr.</i>) 60.
New Granada,	(1846,)	" XXXII., 9 <i>Id.</i> , (<i>Tr.</i>) 94.
Prussia,	(1799)	" XXV., 8 <i>Id.</i> , 176.
Prussia,	(1828,)	" X., 8 <i>Id.</i> , 382.
Russia,	(1832,)	" VIII., 8 <i>Id.</i> , 448.
Austria,	(1848,)	" IV., 9 <i>Id.</i> , (<i>Tr.</i>) 154.
The Two Sicilies,	(1845,)	" VIII., 9 <i>Id.</i> , (<i>Tr.</i>) 18.
Hawaiian Islands,	(1849,)	" X., 9 <i>Id.</i> , (<i>Tr.</i>) 181.

Treaty between the United States and

Austria, (1829.) Art. X., 8 *U. S. Stat. at L.*, 400,

Portugal, (1840.) “ X., 8 *Id.*, 564,

Sardinia, (1838,) “ XV., 8 *Id.*, 518,

modified this by adding “to which private individuals of their nation are subject in the same place, *in respect of their commercial transactions.*”

The treaty between the United States and France, 1853, (10 *U. S. Stat. at L.* (Tr.) 114, Art. II.) gives absolute exemption from direct and personal taxation: but it provides that if consuls are citizens of the country of residence; if they are or become owners of property there, or engage in commerce, they are subject to the same taxes, &c., and, with the reservation of the treatment granted to commercial agents, to the same jurisdiction as citizens owning property or engaged in trade.

The treaty between the United States and Guatemala, 1849, (10 *U. S. Stat. at L.* (Tr.) 14, Art. XXX.) and others, also except taxes payable on account of property as well as commerce, for which they are taxable like other inhabitants.

In addition to the treaties cited in this place, others, chiefly earlier in date, contain provisions more or less similar. Such may be found in *De Clercq*, vol. 5, pp. 603, 614, 632; *Id.*, vol. 6, pp. 29, 157, 185, 282, 290, 303, 308, 551; *Id.*, vol. 7, pp. 179, 322, 362, 586; and in 10 *U. S. Stat. at L.* (Tr.) pp. 45, 80, 95; 11 *Id.*, 591, 650; 12 *Id.*, 1020, 1157. See the *United States Consular Regulations*, (1870,) ¶ 29, and treaties in App. No. 1.

For a statement of the immunities now allowed by European nations to consuls, see *Guide Pratique des Consulats*, vol. 1, p. 12.

ARTICLE 180. Right of passage.

181. Immunities of consuls.

182. Duty as witnesses.

183. Books, papers, &c., not to be seized.

184. Dwelling and office inviolable.

185. General subjection to local law.

Right of passage.

180. A consul, who is not a domiciled member of the nation of his residence,¹ if he has received the formal act of permission required by article 166, has the right of passage through the territory of the nation of his residence, for the purpose of leaving the country; which right continues for a reasonable time after his powers have terminated.

Bluntschli, § 275; *Viveash v. Becker*, 3 *Maule & Selwyn's Rep.*, 297, cited in 2 *Phill. Int. Law*, pp. 260, 268.

¹ A person having a foreign domicile before appointment, does not lose it by residing as consul; and, therefore, it seems that his right of return to his domicile should be secured equally as if he were a foreigner.

Immunities of consuls.

181. A consul, authorized as provided in the last article,¹ is entitled to the following immunities :

1. From military billetings² in his consular dwelling³ and office ;⁴
2. From military and naval service⁵ of every kind ;
3. From jury and police duty, and all other civil service ;⁶ and,
4. From arrest on civil process in all cases.⁷

Taxation, of all kinds, is not included among the immunities allowed by this Code, for reasons stated in the introductory note to this section.

¹ It is supposed proper to require an *exequatur* in all cases, as a foundation for the consular immunities ; (see Articles 166-169 ;) though this is not now an universal rule.

The first consular convention between the United States and France, 1788, (8 *U. S. Stat. at L.*, (Tr.) 106,) extended the general immunities to vice-consuls and secretaries, though the latter were not required to have an *exequatur*. The convention of 1853, however, (10 *Id.*, (Tr.) 116, Art. II.) secures the same to consular pupils and to secretaries, &c., discharging the consular duties *ad interim*.

The treaty between the United States and Hayti, (Nov. 3, 1864,) 13 *U. S. Stat. at L.*, 711, Art. XXXV., extends the immunity from taxes to persons, not being citizens, attached to the service of consuls. And to the same effect, with the additional exemption from public service, is the treaty between the United States and Brazil, 1828, 8 *Id.*, 397.

See, also, the treaty between the United States and

Colombia,	1824,	8 <i>U. S. Stat. at L.</i> , 318.
Denmark,	1826,	8 <i>Id.</i> , 342.
Mexico,	1831,	8 <i>Id.</i> , 422.
Chili,	1832,	8 <i>Id.</i> , 440.
Peru-Bolivia,	1836,	8 <i>Id.</i> , 494.
Venezuela,	1836,	8 <i>Id.</i> , 480.
New Granada,	1846,	9 <i>Id.</i> , (Tr.) 94.
Guatemala,	1849,	10 <i>Id.</i> , (Tr.) 14.

In order that a nation may retain full jurisdiction over its own members, when appointed consuls by a foreign nation, a waiver of immunity, as a condition of granting the *exequatur*, should be required.

² 2 *Phil. Int. Law*, p. 244.

Treaty between the United States and

Italy, Feb. 8, 1868, Art. III., 15 *U. S. Stat. at L.*, (Tr.) 185.

Hayti, Nov. 3, 1864, " XXXV., 13 *Id.*, 711.

³ *Halleck*, p. 244, § 8.

⁴ The authorities usually speak of the consular dwelling only ; but as the dwelling is sometimes separate from the office, the latter is specially mentioned, for it is peculiarly entitled to exemption.

⁵ *Martens* says, that if necessary, the consul may be required to provide

a substitute; but it is suggested as better to disallow this qualification. *Guide Dip.*, tome 1, § 74; cited in *Halleck*, pp. 248, 249.

See *United States Consular Regulations*, (1870,) ¶ 30; and treaties in Appendix No. 1.

⁶ *Halleck*, pp. 248, 249.

⁷ The existing rule only extends this exemption to consuls who do not engage in commerce. 2 *Phill. Int. Law*, 268.

The consular conventions between France and

Brazil, Dec. 10, 1860, 8 *De Clercq*, 153.

Austria, Dec. 11, 1866, 9 *Id.*, 669, Art. II.

Portugal, July 11, 1866, 9 *Id.*, 582, Art. II.

provide that arrest of the person can only be applied in civil cases, in causes of action of a commercial nature, where the consul is engaged in commerce.

But it is believed that the necessity of the efficient performance of consular functions, and a harmony with the general tendency restricting imprisonment in civil cases, requires the adoption of the rule in the text.

Arrest in criminal cases is generally sanctioned by the authorities, and there seems to be good reason for allowing it, notwithstanding the interruption of the consular functions thereby caused. It is an important question, however, whether arrest should be allowed for crimes only, or also for misdemeanors, (*delits*.) The recent treaty between the United States and Italy allows of arrest only for offenses which are crimes by the local law, and punishable as such. The treaty between the United States and France, 1853, (10 *U. S. Stat. at L.*, (*Tr.*) 114, Art. II.,) is to the same effect. It is understood, however, that the French law generally holds foreign consuls amenable in cases of *delit*.

The latter rule seems preferable, and, therefore, no exemption in criminal cases is specified.

See *U. S. Cons. Reg.*, (1870,) ¶ 27, and treaties in App. No. 1.

Duty as witnesses.

182. A consul may be required to attend as a witness in the tribunals of the nation of his residence, within five leagues from the consular office, in the same manner as any other witness.

When the testimony of a consul is required for a tribunal beyond that distance, it must be taken in writing, at the consular office, in the manner prescribed by the law of the place for taking depositions.

This is suggested as, on the whole, a more reasonable and convenient rule than that embodied in many of the treaties.

The convention between the United States and Italy, cited above, provides that no consular officer, who is a member of the nation by which he was appointed, and who is not engaged in business, shall be compelled to

appear as a witness before the courts of the country where he resides. When the testimony of such consular officer is needed, he shall be invited in writing to appear in court ; and if unable to do so, his testimony shall be requested in writing, or be taken orally, at his dwelling or office ; and it is the duty of the consular officers to comply with such requests without unnecessary delay.

The same treaty also provides that in all criminal cases in which the constitution or laws of the nation secure to persons charged with crimes the attendance of witnesses in their favor, the appearance in court of a consular officer, when required as such witness, shall be demanded, with all possible regard for the consular dignity and to the duties of his office.

See *United States Consular Regulations*, (1870,) ¶ 28 ; and treaties in Appendix No. 1.

To similar effect is the treaty of friendship, commerce and navigation between France and Peru, March 9, 1861, Art. XLIII., 8 *De Clercq*, 193.

See, also, consular convention between France and

Brazil, Dec. 10, 1860, Art. II., 8 *De Clercq*, 153.

Austria, Dec. 11, 1866, “ III., 9 *Id.*, 669.

Portugal, July 11, 1866, “ II., 9 *Id.*, 582.

That between France and Brazil, above, restricts this provision to consular officers and their clerks, who are *members* of the nation by which they are appointed.

Books, papers, &c., not to be seized.

183. The authorities cannot seize, examine, or in any way interfere with the books, papers or other property held by the consul, by virtue of his office.

But a consul engaged in business must keep the books and papers relating thereto separate from those of the consulate ; and they may be examined in the same manner as papers of other persons ; except as provided in the article entitled *Searches and Seizures*, in the Section concerning RIGHTS OF RESIDENCE, of Chapter XXV., entitled PERSONAL RIGHTS OF FOREIGNERS.

United States Consular Regulations, (1870,) ¶ 25, and treaties in Appendix No. 1.

By Article 109, an exception to this rule is recognized in the case of national emergencies affecting the existence of the nation.

The treaty between the United States and Italy, 15 *U. S. Stat. at L.*, (Tr.), 185, Art. VI., by which this article is suggested, exempts simply papers deposited in the consulate.

See, also, 2 *Phill. Int. Law*, 245.

To much the same effect is the treaty of friendship, commerce and navigation between France and Peru, March 9, 1861, 8 *De Clercq*, 193, Art. XLV. ; and the consular convention between France and Portugal, July 11, 1866, 9 *Id.*, 582, Art. V.

To the same effect, without, however, the last provision, is the consular convention between France and

Austria, Dec. 11, 1866, Art. V., 9 *De Clercq*, 669.

Brazil, Dec. 10, 1860, " III., 8 *Id.*, 153.

And the treaty of friendship, commerce and navigation between France and Honduras, Feb. 22, 1856, 7 *Id.*, 10, Art. XXI.

Dwelling and office inviolable.

184. The consular dwelling and office are exempt from the jurisdiction of the nation of his residence,¹ but cannot be used as an asylum,² except for the protection of members of the consul's nation against invasions of rights secured to them by this Code,³ or by special compact, or for the like protection of members of a nation on whose behalf his friendly offices are interposed.

¹ The convention between the United States and Italy, 15 *U. S. Stat. at L.*, (*Tr.*) 185, Art. VI., declares that the consular offices and dwellings shall be at all times inviolable, and the local authorities shall not, under any pretext, invade them.

See, also, convention or treaty between the United States and

Belgium, December 5, 1868, Art. VI., *U. S. Cons. Reg.*, (1870,) ¶ 500.

France, February 23, 1853, " III., 10 *U. S. Stat. at L.*, 992.

² Convention between the United States and Italy, above, and the treaty of friendship, commerce and navigation between France and Peru, March 9, 1861, 8 *De Clercq*, 193, Art. XLIV.

³ This exception seems reasonable, under the system of a Code in which the rights of foreigners are defined.

Levi, (*International Commercial Law*, vol. 1, Intro., p. xii.) says, that a "consulate is held to be the territory of the country which the consul represents; and therefore, all deeds and acts done within it, or under "the seal of the consulate, are held as done in England." The conclusion is doubtless sound, but the reason assigned is questionable. The foregoing provisions do not confer any extra-territorial character on the consulate.

General subjection to local law.

185. Except as provided in this Title, the consular office confers no exemption from the laws and jurisdiction of the country of the consul's residence.

In case a consul is prosecuted, or punished, or deprived of the exercise of his functions, for an offence against the laws of the country of his resi-

dence, the offended government must acquaint the consul's nation with its motives for having thus acted.

Treaty between the United States and

Sweden & Norway, July 4, 1827, Art. XIII., 8 *U. S. Stat. at L.*, 346.

Greece, Dec. 22, 1837, " XII., 8 *Id.*, 498.

Portugal, Aug. 26, 1840, " X., 8 *Id.*, 560.

Swiss Confederation, Nov. 25, 1850, " VII., *U. S. Cons. Reg.*, (1870.)

¶ 696.

Numerous treaties provide that consular officers engaged in commerce must submit to the same laws and regulations to which members of the nation in which they reside are required to submit in the same place in respect to the like business. See, for instance, the treaty of commerce and navigation between France and

The free cities of Lubeck, Bremen and Hamburg,	}	March 4, 1865, Art. XIX., 9 <i>De Clereq.</i> , 187.
Grand Duchy of Mecklenburg Schwerin—extended to the Grand Duchy of Mecklenburg Strelitz,		June 9, 1865, " XV., 9 <i>Id.</i> , 295.
Russia,		June 14, 1857, " XV., 7 <i>Id.</i> , 278.

CHAPTER XIV.

COMMISSIONERS.

ARTICLE 186. Commissioners.

187. Immunities of commissioners.

Commissioners.

186. Agents of intercourse other than those provided for in the last two chapters may be designated as Commissioners.

This designation is also given by the United States to their resident diplomatic officers in the Sandwich Islands, Paraguay, &c. *Lawrence's Wheaton*, 387, note 124.

But an agent, sent with credentials on public business, is by the law of nations a public minister, and the title of agent or commissioner makes no difference. *Vattel's Law of Nations*, Bk. 4, ch. 6, § 75.

Immunities of commissioners.

187. Commissioners have only such immunities as the nation to which they are sent may choose to accord.

Bluntschli, § 243; *Klüber*, §§ 170-172.

TITLE IV.

INTERNATIONAL COMPACTS.

The interpretation and effect of contracts by a nation with parties other than another nation, is provided for by the Chapter on CONTRACTS, in Part V., entitled PRIVATE RIGHTS OF PERSONS.

See a discussion of the consequences of non-execution of the engagements of governments relative to the payment of their public debt, in *Revue de Droit Intern. et de Legis. Comp.*, 1869, vol. 1, no. 2, p. 275.

CHAPTER XV. Treaties.

XVI. Informal Compacts.

CHAPTER XV.

TREATIES.

ARTICLE 188. "Treaty" defined.

- 189. Capacity to conclude treaty.
- 190. Consent, how communicated.
- 191. Treaty by state in revolution.
- 192. Ratification, when necessary.
- 193. Ratification, when obligatory.
- 194. Notice of reasons of refusal to ratify.
- 195. Treaty negotiated contrary to minister's full power.
- 196, 197. Time of taking effect.
- 198. Treaty interfering with third party.
- 199. What provisions of this Code may be modified by special treaty.
- 200. Demand of performance, when necessary.
- 201. Merger of preceding communications.
- 202. Extinguishment of obligations created by treaty.

"Treaty" defined.

188. The term "treaty,"¹ as used in this Code, means a written² agreement between two or more

nations for the performance or omission of an act creating, terminating, or otherwise affecting an international right³ or relation.

¹ The term "conventions," which *Wheaton*, (*Lawrence's ed.*, p. 460,) understands as restricted to executed agreements, seems no longer to be used with any uniformity in this limited sense.

² Some authorities state that a treaty must be in writing. See *Klüber, Droit des Gens*, § 142; and 2 *Phillimore's International Law*, p. 64, and note m.

³ *Fiore, (Nouveau Droit International, part I., chs. 1-4,)* thinks that a nation cannot by treaty part with any of its essential powers.

Capacity to conclude treaty.

189. Any two nations can make a treaty.

The ratification of a treaty is a recognition of the nation with which it is made. *Lawrence, Commentaire sur Wheaton*, p. 196.

Consent, how communicated.

190. The consent of a nation to a treaty can be communicated with effect only in the form,¹ and through the executive or other department, authorized by its law,² or through its public minister duly empowered.

¹ *E. g.*, constitutional requirements providing for the concurrent action of several departments. *Klüber*, § 142, p. 181, note b; *Lawrence's Wheaton*, p. 452, note 151; *Id.*, 457.

² *Heffter, Droit International*, § 84.

It is the practice of governments, in the drawing up of their treaties with each other, to vary the order of naming the parties, and that of the signatures of the plenipotentiaries, in the counterparts of the same treaty, so that each party is first named, and its plenipotentiary signs first, in the copy possessed and published by itself. And in treaties drawn up between parties using different languages, and executed in both, each party is first named, and its plenipotentiary signs first, in the copy executed in its own language. *Instructions to Diplomatic Agents of United States*, § XX.

In acts between several powers admitting the *alternat*, the order to be followed in signature is decided by lot. Protocol of Treaty of Vienna, Art. VIII., cited in *Lawrence's Wheaton*, p. 380. *Bluntschli, (Droit International Codifié, § 178,)* says, that instead of this rule, that of the alphabetic order of the initials of the several States is often followed.

Treaty by state in revolution.

191. The executive or other departments of a nation

which is in a state of revolution, if not in the peaceable possession of their powers, can make temporary treaties only.

Klüber, Droit des Gens, § 142, p. 181, note a.

Ratification, when necessary.

192. Ratification of a treaty by a nation is necessary to render it binding thereon in the following cases only :¹

1. Where such ratification is therein expressly made a condition ;

2. Where the treaty is concluded by the executive or other department of the nation, and ratification thereof is, in such cases, required by its law ;² or,

3. Where the treaty is concluded through a public minister of the nation who is not authorized to dispense with such ratification, or who, being thus authorized, does not expressly dispense with the same.³

¹ Several authorities apparently contend that ratification is necessary in all cases ; *Lawrence's Wheaton*, p. 452, note 151 ; or at least in all cases of treaties signed by plenipotentiaries. Speech of M. Guizot, *Moniteur*, Feb. 1, 1843 ; 1 *Ortolan, Diplomatie de la Mer*, 85-89.

The rule uniformly followed in Great Britain, is, that a treaty does not become absolutely binding upon the signatories until it has been ratified. Speech of Mr. Gladstone, in Parliament, Aug. 10, 1870.

² *Lawrence's Wheaton*, p. 455.

³ 1 *Fiore, Nouv. Droit Intern.*, 476. Ratification is sometimes expressly dispensed with by a secret protocol annexed to the treaty, (*Lawrence's Wheaton*, p. 454,) and consequently forming part of it. It may be thought better to modify subdivision 3, by inserting "therein" before "expressly."

Ratification, when obligatory.

193. A nation by whose public minister a treaty is concluded in conformity with his powers, is bound to ratify the same, if his powers contain an express agreement, authorized by the law of the nation, that it shall be ratified when so concluded ; unless by the terms of the treaty its ratification is optional with such nation ; or unless, before the time agreed on for its ratification, an event has occurred or been discovered which if occurring or discovered after

its ratification would authorize such nation to rescind or refuse to perform it.

Notice of reasons of refusal to ratify.

194. Where ratification is refused pursuant to the provisions of the last article, notice of such refusal, stating the reasons thereof, must be forthwith given to the other parties to the treaty.

Treaty negotiated contrary to minister's full power.

195. The negotiation of a treaty by a public minister not in accordance with his powers¹ creates no obligations on the part of his nation to ratify it.

¹ Even if the full power contains a promise to ratify all his acts. *Lawrence's Wheaton*, p. 447.

Time of taking effect.

196. A treaty which is binding on a nation without ratification, is binding from the date of its signature, unless therein otherwise expressed.

The same.

197. A treaty which requires ratification binds the ratifying nation¹ from the time of ratification,² unless therein otherwise expressed.

¹ The present rule makes ratification retroact as regards the nation, but not as to persons and things within its jurisdiction. *Lawrence's Wheaton*, p. 453, note 152.

The Supreme Court of the United States, in the case of *Jecker v. Magee*, held, that the principle of relation which, as respects the rights of either government, regards a treaty as concluded from the date of its signature, does not apply to private rights under it. As affecting these, it is not considered as concluded but from the exchange of ratification. *New York Transcript*, August 18, 1870.

² This is the case, independently of any auxiliary legislation necessary to carry the treaty into effect, unless otherwise provided therein. *Lawrence's Wheaton*, p. 457.

Treaty interfering with third party.

198. If a treaty interferes with the rights, under a pre-existing treaty, of a nation other than a party to the new treaty, it is, to the extent of the interference, valid, as to such nation, only so far as it submits to the execution thereof.

Bluntschli, § 414.

What provisions of this Code may be modified by special treaty.

199. Any two or more nations may, by special compact, modify the application of any of the provisions of this Code, in respect to themselves, and persons and things within their exclusive jurisdiction, but not in respect to the other parties to the Code, or their members.

No treaty between two or more nations should absolve either from obligations to other nations created or defined by this Code.

Demand of performance, when necessary.

200. Except in respect to an act therein stipulated to be performed at a certain time, the performance of a treaty must be demanded before any nation, party thereto, can be placed in default.

Heffter, § 94.

Merger of preceding communications.

201. All communications, written or verbal, between the parties to a treaty, preceding its signature, and relating to the subject thereof, are merged in the treaty.

This provision is from *Lawrence's Wheaton*, p. 442; extended to written communications, not referred to expressly, or by necessary implication.

Extinguishment of obligations created by treaty.

202. An obligation created by treaty is extinguished, either,

1. By its full performance; or,
2. By renunciation of the party entitled to performance; or,
3. By the subsequent permanent impossibility of performance, without the fault of the party bound; or,
4. By fulfillment of the conditions, or the expiration of the time, expressed in the treaty for its extinguishment;¹ or,
5. By breach of its conditions by the nation entitled to performance;² or,
6. By rescission³ of the treaty, through common consent.

¹ The effect of changes in form of government, and of division or annexation of nations, is more fully treated in Chapter III., respecting PERPETUITY. *Klüber*, § 145.

² The insertion of this clause recognizes the right of a party to a treaty to declare itself released from an obligation imposed thereby, when the other party fails to fulfill the conditions of such obligation. This principle is applicable to contracts, generally. Its application to treaties is, however, disputed; it being claimed that no Power can set aside, amend, or modify treaty stipulations, by its own will, and *without the consent of all the other contracting parties*.

In the case of the Black Sea question, Russia informed the parties to the Treaty of Paris, (March 18–30, 1856,) that a breach of the stipulations for the neutralization of the Black Sea, entitled her to be released from the obligations contained in the treaty, to limit her naval forces to considerable dimensions; and assented to a conference either for a confirmation, or renewal, or modification of the stipulations of the treaty, or for its rescission through common consent.

³ *Wheaton*, (*Dana's ed.*, § 283,) adds, that treaties may be avoided upon the ground of the mutual error of the parties respecting a matter of fact. It seems better, however, to leave this and the other cases of rescission to the rules applicable to controversies between nations.

CHAPTER XVI.

INFORMAL COMPACTS.

ARTICLE 203. Informal compacts may be made.

204. Ratification of written compacts made
by unauthorized agents.

Informal compacts may be made.

203. Compacts, other than treaties, may be made in writing¹ between nations, without the formality of a treaty.

¹ *Wheaton*, (*Lawrence's ed.*, p. 442,) says, modern usage requires that verbal agreements should be reduced to writing.

Ratification of written compacts by unauthorized agents.

204. The consent of a nation to an agreement in writing, made on its behalf by a person not authorized, may be given expressly, or by acting under it as if fully concluded and ratified.

Lawrence's Wheaton, p. 442.

T I T L E V .

REMOVAL OF PERSONS.

CHAPTER XVII. Asylum.

XVIII. Extradition.

CHAPTER XVII.

ASYLUM.

ARTICLE 205. Right of asylum.

206. Exclusion of criminals.

207. Abuse of asylum.

208. Return.

209. Obtrusion of convicts, paupers, &c.¹*Right of asylum.*

205. No nation is bound¹ to surrender a person within its exclusive jurisdiction² to any foreign power, except in cases provided for by this Code, or by special compact.

¹ Until recently, the obligation of a nation to deliver up criminals upon the demand of a foreign nation, has been a disputed point; but now the weight of authority seems to be against it.

Twiss, (*Law of Nations*, Part I., § 221,) states the rule substantially as above. See also *Lawrence's Wheaton on International Law*, p. 233; and *Woolsey's International Law*, § 79.

Bluntschli, (*Droit International Codifié*, § 395,) says, the obligation to surrender exists only in case of special treaties, or when the general safety demands it; and in the latter case, it relates only to grave crimes, and demands by a nation whose penal system offers guarantees of impartiality and humanity. See also Section I., as to EXTRADITION OF CRIMINALS, of Chapter XVIII., entitled EXTRADITION.

² The right of asylum extends not only to the territory of the nation, but to other places within its exclusive jurisdiction, which are hereafter defined. The application of the rules proposed by the Code will solve

the vexed questions of refugees from ship to shore, and shore to ship, when arising between nations parties to the Code, in the following manner:

Against a public armed ship, a demand for surrender cannot be enforced.

In the case of an unarmed ship, private or public, within the jurisdiction of a nation, process of the nation can be executed on board, and therefore a deserter or criminal may be arrested, either for prosecution in the courts of the country, or for surrender to another nation, or its ships.

In the case of deserters from ship to shore, application must be made to the local authorities, under the provisions of this Title.

By the existing rule, which will, of course, still be applicable in the case of nations not parties to the Code, a demand for the surrender of a person escaping from a nation to a foreign ship within its waters, must first be made on the officer in command. If he refuse, and the ship is a public armed ship, redress must be sought from his government. If the ship be a private ship, application must be made, after such refusal, to the consul of his nation, or to the public armed ship of such nation stationed at the port; and it is only when such application does not avail, that resort to force can be had. *Guide Pratique des Consultats*, vol. 2, p. 171; *Ortolan, Règles Int. et Dipl. de la Mer*, vol. 1, p. 301.

Exclusion of criminals.

206. No nation is bound to furnish an asylum to criminals from foreign countries; and it is for each government, or its authorized officers,¹ to determine the cases, and manner in which such persons shall be excluded or removed.

¹ The commanding officer of a ship of war may expel a refugee, without awaiting proceedings in extradition. *Ortolan, Règles Int. et Dipl. de la Mer*, vol. 1, p. 299.

Every nation has an undoubted *right* to surrender fugitives from other States. No man has a right to say, I will force myself into your territory, and *you shall protect me*. *Commonwealth v. Deacon*, 10 *Sergeant & Rawle's (Pennsylvania) Rep.*, 125.

Dana says, that the general tone of the judicial decisions and of political debate in the United States has been adverse to the right of a government, in the absence of treaties and statutes, to surrender a fugitive criminal. *Dana's Wheaton on International Law*, § 115, note [73.]

Such surrender was, however, once made in the United States, in the case of Arguelles, governor of a district in Cuba, who, having sold into slavery a number of Africans who were in his charge as an officer, escaped to New York. There was no extradition treaty between the United States and Spain: but upon proof of the facts to the Secretary of State, and a request by the Spanish authorities for the arrest and surrender of

Arguelles as an act of favor and comity, not only because of his offense, but also because his presence in Cuba was necessary to the liberation of the Africans he had sold, the Secretary of State, with the sanction of the President, ordered his arrest and surrender, as a purely executive act. The Senate (May 28th, 1864,) inquired of the President under what authority of law or treaty this was done. The response of the Secretary of State took the ground that "although there is a conflict of authorities concerning the expediency of exercising comity towards a foreign government, by surrendering at its request one of its own subjects charged with the commission of crime within its territory, and although it may be conceded that there is no national obligation to make such a surrender upon a demand therefor, unless it is acknowledged by treaty or by statute law, yet a nation is never bound to furnish asylum to dangerous criminals, who are offenders against the human race; and it is believed that if in any case the comity could with propriety be practised, the one which is understood to have called forth the resolution furnished a just occasion for its exercise." *United States Diplomatic Correspondence*, 1864. Part II., 60-74; *Congressional Globe*, 1864.

A resolution introduced into the House of Representatives, condemning this act, as a violation of the Constitution and in derogation of the right of asylum, was rejected by a large majority, and the subject referred to a committee; but it was followed by no further action of Congress. An indictment was found in the State courts against the marshal who made the arrest, charging the act as an offense against the statutes respecting kidnapping; but the case has not been brought to trial. The question involved affected not only the right of the United States, but the right of the President to act, in the absence of a statute; and neither question can be considered settled by this case.

Abuse of asylum.

207. One who uses his asylum for promoting hostilities against a foreign country, may be proceeded against under the law of the nation of his asylum, or may be surrendered to the nation aggrieved.

Bluntschli, (§ 398,) states the rule to be, that, in case of abuse of asylum, the nation which has granted asylum is bound, as toward a friendly nation, to withdraw its permission to the refugee to sojourn upon its territory, or to impose such restrictions as shall preclude all danger to the country of the refugee.

The right of a State to demand that rebellious subjects shall not be allowed to plot against it in the territory of another State, cannot, when stretched to its utmost limit, be extended beyond the point of requiring the foreign State to send the fugitive in safety elsewhere; and the demand can only be legally made when the State has confessed or demonstrated its inability to restrain the fugitive from carrying on plots against the country from which he has fled. *Phillimore's International Law*, vol. I., p. 415.

In the course of debate in the British House of Peers, March, 1853, upon the question of foreign refugees, the Prime Minister stated that the government had resolved if any event occurred which gave just ground of complaint to a foreign government against a refugee in England, to take upon themselves the prosecution of such individual, and not to throw the burden of it upon the foreign minister.

The principal occasions upon which such a course has been pursued, have been stated as follows :

In 1799, certain English subjects were prosecuted for publishing a libel upon Paul I., Emperor of Russia. They were convicted and punished by fine and imprisonment. *State Trials*, (*Howell*), vol. XXVII., 627-630.

In 1803, Jean Peltier, a French refugee, was prosecuted for a libel on Napoleon Bonaparte, then First Consul of the French Republic. He was convicted, but the breaking out of war prevented his receiving judgment. *State Trials*, (*Howell*), vol. XXVIII., 530-619.

Woolsey, (*International Law*, § 79,) says : " A nation has a right to harbor political refugees, and will do so, unless weakness or political sympathy lead it to a contrary course. But such persons may not, consistently with the obligation of friendship between States, be allowed to plot against the person of the sovereign, or against the institutions of their native country. Such acts are crimes, for the trial and punishment of which the laws of the land ought to provide, but do not require that the accused be remanded for trial to his native country." See also *Wildman's International Law*, p. 59 ; *Law Lib.*, vol. 52, p. 42.

After the attempt to assassinate the Emperor of the French on the 14th of January, 1858, the French Minister of Foreign Affairs represented that plots to assassinate the Emperor had been formed in England, and asked that England should provide for the punishment of such offenses. In accordance with the request, Lord Palmerston, being Prime Minister, on the 8th of February introduced a bill for the punishment of conspiracies formed in England to commit murder beyond Her Majesty's dominions ; but the bill was rejected, and the ministry immediately resigned. The bill was opposed by some from an unwillingness to interfere in any way with the right of asylum ; but the controlling reason evidently was a feeling that the French government had used too dictatorial a tone in demanding the passage of such a law. *Annual Register*, 1858, pp. 5, 33, 202 ; *Annuaire des deux Mondes*, 1857-8, pp. 32, 110, 420 ; cited in *Lawrence's Wheaton*, p. 246, note.

The same application was made to Sardinia, and a law was passed there, making it a special offense to conspire against the lives of sovereigns, although the punishment originally proposed in the bill as introduced by the ministers, was mitigated by the Chambers. M. Cavour sustained the measure, both on political grounds and because he deemed it important that Sardinia, under the circumstances in which she was placed, should not act in opposition to the views of France. *Annuaire de deux Mondes*, 1857-8, p. 216.

Return.

208. Foreign convicts or accused persons, paupers, and persons suffering from mental alienation or from other maladies which give them the right to public relief, who enter a nation, may be sent back by it to the nation of which they are members, at any time while the legal liability or the state of dependence continues, and before they have acquired the national character of the nation into which they have entered.

The declaration between France and Bremen, Oct. 20, 1866, (9 *De Clercq*, 620,) which contains such a provision as to insane, &c., requires each nation to reimburse the expenses of the return of such persons, as well as the expenses occasioned by the sojourn and treatment of its own members in the asylums of the other.

The treaty between France and the Swiss Confederation, June 30, 1864, (9 *De Clercq*, 91,) provides that the members of one nation established in the other, who shall be sent back by legal sentence, or according to the laws or regulations of police respecting morals or mendicity, shall be received at all times with their families in the country of their origin, &c.

By the treaty between the United States and the Swiss Confederation, Nov. 25, 1850, (11 *U. S. Stat. at L.*, 587, Art. III,) each nation is bound to receive back its members, with their wives and legitimate issue, who have preserved their rights according to its laws, in case they desire to return, or are sent back by judicial decision or act of police, according to the laws regulating morals and mendicity.

Obtrusion of convicts, paupers, &c.

209. No nation has a right to obtrude persons, such as are mentioned in the last article, upon another nation, or aid or encourage such to emigrate to another nation.

Persons entering a nation contrary to this article, may not only be sent back by it to the nation offending, at the expense of the latter, but the nation aggrieved is entitled to redress for the unfriendly act.

This article is suggested by a letter from Dr. Francis Lieber, (dated September 4, 1869,) to the Secretary of State of the United States, in reference to the obtrusion of *Convicts*. His conclusions are thus stated :

“In my opinion, we stand in need of three things:”

“First, the foul character of the transaction must be openly acknowledged and plainly laid down in the law of nations, which, doubtless, has not been done long ago, because the offense has never before, so far as I know, presented itself so strikingly as in our times of emigration, which

resemble, though peaceful, the period of migration of nations, which was warlike."

"We ought to stipulate by treaties (the reverse of extradition treaties) with the other governments of our family of nations, that every attempted importation of convicts shall be considered as a grave offense against the law of nations, and a most "unfriendly act," calling for serious remedies; and the writers on the law of nations ought soon to lay down the fair and simple principle in their works. This is one of the ways in which the law of nations advances, and has so nobly advanced in the last hundred years. I have never failed to touch on this principle in my lectures on this the greatest branch of law."

"Secondly, we stand in need of a law of the United States by which it is made penal to introduce convicts into our territory, both for the captain commanding the importing vessel, and by a high fine imposed on the owners of the same; and by which law provision is made that the imported convicts be exported again to the government whence they came, at the expense of said government. A bill of this sort was introduced in February, 1867, by the late H. J. Raymond, then one of our New York representatives, induced to do so by Mr. Frederic Kapp, a foreign-born citizen himself, and one of the most active New York Commissioners of Emigration. The bill, however, was brought in too late, and only passed the House of Representatives."

... "Thirdly, it will be advisable that such a law once having been passed, but the treaties which have been spoken of not yet having been concluded, the United States proclaim openly and declare to every government in amity with the United States, that henceforth our government shall consider the attempted obtrusion of convicts a highly penal act, and if *governments* have anything to do with it, an unfriendly act in the sense of the law of nations which requires satisfaction."

CHAPTER XVIII.

EXTRADITION.

SECTION I. Extradition of Criminals.

II. Of Deserters.

SECTION I.

EXTRADITION OF CRIMINALS.

The practice of extradition rests upon the principle, that the common interests of all nations require the punishment of great criminals, and demand for that purpose an exception to the general rule that the penal laws of a State are local, and can have no aid from foreign powers.

This Section proposes to combine the penal systems of independent nations sufficiently for common protection against the ubiquity of crime. See *Bluntschli, Droit International Codifié*, § 395, and note.

There is, as has been already observed, a difference of opinion among jurists whether extradition, independent of treaty, is a matter of duty or discretion. If it be simply a matter of discretion, then the refusal to surrender fugitive criminals is no ground of offense to the State demanding it.

The leading authorities are thus epitomized by *Forsyth*, in *Cases and Opinions in Constitutional Law*, p. 369, note :

The former opinion is maintained by Grotius, Herneccius, Burlamqui, Vattel, Rutherford, Schmelzing and Kent ; the latter, by Puffendorf, Voet, Martens, Klüber, Leyser, Kluit, Saalfeld, Schmaltz, Mittermeier and Heffter. See *Dani's Wheaton*, § 115, and note 73.

Woolsey, (*International Law*, § 79.) says : " We conclude that there is a limited obligation of nations to assist each other's criminal justice, which only treaties expressing the views of the parties at the time, can define."

Heffter, (*Droit International*, § 63,) says : " Early writers, such as Grotius and Vattel, declared extradition obligatory ; but the negative is held by modern writers, and has prevailed in practice."

Phillimore, (*International Law*, vol. I., 413,) says : " The result of the whole consideration of this subject is that the extradition of criminals is a matter of comity, not of right, except in the cases of special convention."

Clarke, in his treatise upon the *Law of Extradition*, (ch. 1.) from a review of the opinions of jurists, draws the following conclusions :

" The surrender of fugitive criminals is an international duty. It may not be so plainly a matter of right, that the refusal to grant it should subject a nation to the penalty of war ; but such a refusal is so clearly injurious to the country which refuses, and to the whole world, that it is a serious violation of the moral obligations which exist between civilized communities."

" In former times, the surrender was granted by a sovereign, in virtue of his own prerogative ; but the recent course of European legislation has been to restrain this prerogative, and to cast upon the legislature of a country the task of providing for the performance of this duty."

"This provision should be guarded by the exclusion of political offenders, and requirement of some evidence of guilt before the accused person is delivered up. It would be wise also to restrict the offenses for which surrender should be granted, according to the facility with which criminals could escape from one country to another; but to refuse to make provision at all, would be to inflict an injury upon the whole world, and especially upon the country so refusing." See also, 2 *Ward's Law of Nations*, 319.

The provisions of this Section are based chiefly upon those of existing treaties, particularly the numerous American treaties, and the most recent French treaties; with such modifications as the nature of a general rule requires, and such as are suggested by the recent opinions of jurists and judicial decisions.*

In addition to the French treaties cited under the articles of this Section, the following, chiefly of an earlier date, may be referred to: *De Clercq*, vol. 5, p. 599; vol. 6, pp. 2, 19, 25, 114, 232, 277, 279, 324, 345, 347, 372, 431, 443, 449, 452, 455, 472, 499, 579, 601; vol. 7, pp. 186, 444, 618; vol. 8, pp. 42, 76; vol. 9, p. 407.

For an instructive history of the American doctrine of extradition, see the Letter of Mr. Lawrence, in the *Transactions of the National Association for the Promotion of Social Science*, 1866, p. 151.

ARTICLE 210. Duty of extradition.

211. The requisition.

212. Requisition in case of offense committed on the frontier.

213. Requisition in case of offense within a colony.

214. What criminals are subject to extradition.

215. Exception of certain offenses.

216. Order of arrest.

217. Arrest in anticipation of requisition.

218. Preliminary investigation.

219. Rules for conducting investigation.

220. Documentary evidence.

221. Necessary proof of guilt.

222. Evidence in case of convicted criminals.

223. Inquiry as to real motive of demand.

* As the British government have entered into so few treaties of extradition, it is noticeable that *Clarke*, in his *Treatise on Extradition*, gives to the American laws the first place in the history of the Modern Law and Practice of Extradition. He says: "In the matter of extradition, the American law is better than that of any country in the world; and the decisions of the American judges are the best existing expositions of the duty of extradition, in its relations at once to the judicial rights of nations, and the general interests of the civilization of the world."

Several opinions of the United States Attorneys-General, here referred to, will also be found in *Cases and Opinions in Constitutional Law*, by *Forsyth*, pp. 244-366.

ARTICLE 224. Conflicting claims.

- 225. Surrender of those under arrest for local offenses may be deferred.
- 226. Surrender, notwithstanding civil arrest.
- 227. Conditional extradition.
- 228. Member of a third nation.
- 229. Surrender, by whom made.
- 230. Surrender in case of offenses committed on the frontier.
- 231. Surrender by colonial government.
- 232. Things in prisoner's possession.
- 233. Second arrest.
- 234. Custody of the prisoner.
- 235. Discharge in case of delay of extradition.
- 236. Limitations of time extended in certain cases.
- 237. Restrictions as to punishment.
- 238. Necessary legislation to be provided.

Duty of extradition.

210. Each nation, on demand made by another nation, through its supreme executive authority,¹ in the manner provided in this Section, and at the expense of the demanding nation,² must deliver up to justice persons³ who, being accused of crimes enumerated in article 214, within the jurisdiction⁴ of the latter, are found⁵ within the jurisdiction⁶ of the former.

This article and the next are founded on Article I. of the convention of November 9, 1843, between the United States and France. 8 *U. S. Statutes at Large*, 580; and other treaties.

¹ All demands for international extradition must proceed from the *supreme political authority* of the demanding State. 7 *Opinions of U. S. Attorneys-General*, p. 6.

There can be no actual extradition until a proper requisition to that effect has been made by the foreign government to the Secretary of State. Extradition cannot be made upon mere *judicial* documents, for they are not requisitions, but only *proof* upon which the Secretary of State is to act when due requisition shall have been made. 8 *Opinions of U. S. Attorneys-General*, p. 240.

² A provision that the expenses of any detention and delivery, effected in virtue of the preceding provisions, shall be borne by the government in whose name the requisition is made, is usual in the treaties. The same rule is stated by *Bluntschli, Droit Intern. Codifié*, § 400.

But where, in consequence of conflict between the judicial authorities of the United States and those of a State, the latter aiming to prevent the

extradition, the United States intervenes to maintain its own dignity in the premises, the special expenses of such intervention should be defrayed by the United States. 7 *Opinions of U. S. Attorneys-General*, p. 396.

³ As to the exception in favor of citizens or subjects, see Article 215, note 5. As to members of third nations, see Article 228.

⁴ It has been said, that to justify the commencement of process in extradition, it must appear that the criminal acts charged were committed within the territorial jurisdiction of the demanding government. 8 *Opinions of U. S. Attorneys-General*, p. 215; 1 *Id.*, p. 83.

But on the construction of the British treaty of extradition, a crime committed at sea, on board of an American vessel, has been considered the same as if committed in the territory of the United States. And it has been considered under the French treaty, that where a crime is committed at sea, it is constructively committed within the territory of the Union, and is to be judged by the Federal judiciary alone, and is, therefore, rightfully a case of extradition. *Lawrence's Wheaton*, p. 242, note. See, also, *Re Bennett*, *Law Times Rep.*, vol. XI., 488. Hence, it seems better to refer to the legal jurisdiction. See Article 309.

⁵ The language of some of the treaties is, "persons who seek an asylum, or are found;" but obviously, the latter circumstance alone controls the case. It is not sufficient to show that the accused sought an asylum, if not found within the territorial jurisdiction; and if he is so found, it is not necessary to show that he was seeking asylum.

An alleged criminal is subject to extradition, notwithstanding that he may have come to the country otherwise than as an apparent fugitive on account of the particular crime; for the treaties apply not only to persons seeking an asylum professedly, but to such as may be found in the country also. 8 *Opinions of the U. S. Attorneys-General*, p. 306.

⁶ The treaty between the United States and The Two Sicilies, October 1, 1855, (11 *U. S. Stat. at L.*, 653, Art. XXI,) expressly extends to the case of one seeking asylum on board the vessels of war of the nation on which the demand is made. See treaty between the United States and China, June 18th, 1858, 12 *U. S. Stat. at L.*, 1027, Art. XVIII.

The article, in its present form, defines the right of extradition, as it is now recognized, and extending only to crimes committed within the jurisdiction of the demanding nation.

It may be thought desirable to extend the rule to offenses against the law of a nation, committed beyond its jurisdiction, which it would have power to punish if the offender comes within its jurisdiction, and also to offenses against any provision of this Code.

The requisition.

211. Except in the cases provided for in the next two articles, a requisition for extradition must be made through the public minister of the demanding nation;

or, in his absence from the country or its seat of government, through other agencies of international intercourse,¹ and must be addressed to the officers who, by articles 229, 230 and 231, are empowered to make the surrender.

8 *Opinions of U. S. Attorneys-General*, p. 240; convention between the United States and Italy, March 23, 1868, 15 *U. S. Stat. at L.*, (Tr.), 131, Art. V.

Letters permissive, authorizing proceedings of extradition to be instituted in the United States, form in no sense a *judicial* paper of any sort. They are nothing but a political commission, or executive license, to enable the demanding government to go before the courts and proceed to establish a case of extradition in due form of law. Hence a clerical error in such document does not affect its validity. 8 *Opinions of U. S. Attorneys-General*, p. 420.

¹ For the cases in which consuls may act, see article 176.

Requisition in case of offense committed on the frontier.

212. In the case of an offense within the jurisdiction of a State or Territory, being part of a nation, and upon the boundary between two contiguous nations, a requisition may be made, either as provided in the last article, or through the chief civil authority of the frontier State or Territory; or, when, from any cause, the civil authority of such State or Territory is suspended, through the chief military officer in command thereof.

Treaty between the United States and Mexico, December 11, 1861, 12 *U. S. Stat. at L.*, 1200, Art. II.

Requisition in case of offense within a colony.

213. In the case of an offense within the jurisdiction of a colonial government, the demand for extradition may be made, either as provided in article 211, or by the Governor, or chief executive officer of the colony.

Convention for extradition between the French colonies and the colonies of the Netherlands, West Indies, concluded August 3, 1860, between France and the Netherlands, 8 *De Clercq*, 77.

Treaty between Great Britain and Denmark, April 15, 1862. *Accounts and Papers*, 1862, vol. LXIII., (35.)

What criminals are subject to extradition.

214. The person to be surrendered, on the demand

for extradition, according to the provisions of this Section, must have been convicted,¹ or charged, before the courts, tribunals or criminal magistrates of the demanding nation, with one or more of the following crimes,² as now defined in the penal Code of the demanding nation :

Abortion ;³

Arson ;⁴

Barratry ;⁵

Bigamy ;⁶

Burglary ;⁷

Counterfeiting ;⁸

Crime against nature ;

Embezzlement ;⁹

False pretenses or false tokens ;

Forgery ;¹⁰

Kidnapping ;¹¹

Larceny ;¹² punishable by the law of the demanding nation by imprisonment exceeding one year ;

Maiming ;

Manslaughter ;

Murder ;¹³

Perjury ;¹⁴

Piracy ;¹⁵

Rape ;¹⁶

Robbery,¹⁷ with violence or intimidation ;

Slave trading ;

Or convicted or charged in like manner with an offense against any provision of this Code, the violation of which is declared to be a public offense.¹⁸

¹ The American treaties do not generally refer, at least, not in express terms, to convicts. The recent treaty between the United States and Italy, however, does so refer.

² Mr. Westlake proposes that no enumeration be attempted, but that the broad principle be expressed that "Extradition shall be granted whenever the facts, if they had occurred in the country to which the criminal has escaped, would constitute any crime or offense other than treason or sedition." *Transactions of National Association for Promotion of Social Science*, 1866, p. 150. Mr. Rathbone, on the other hand, urges that acts which are not offenses in both countries, and mere of-

fenses against morality, however outrageous, should not be included. *Ib.*, p. 143.

Heretofore the enumeration of crimes for which extradition might be ordered has been fixed with reference to the nature of the intercourse between the nations uniting in the treaty, and the facility with which criminals could escape from one to the other. Such discrimination seems impracticable in a general Code; and of minor importance by reason of the rapidly increasing commercial relations and facilities of intercourse and travel.

One rule is, therefore, here proposed for all the nations uniting in the adoption of this Code, and the offenses included in the article above, are such as the general experience and better opinion mark as proper subjects for extradition. Minor offenses, which require provisions between particular neighboring Powers, can be the subjects of special conventions.

³ *Abortion* : "*Avortement*."

Convention between France and—

The Grand Duchy of Saxe Weimar, Aug. 7, 1858, 7 *De Clercq*, 444.

Austria,

Nov. 13, 1855, 6 *Id.*, 579.

And other earlier treaties.

⁴ *Arson*. This crime is made the subject of extradition by the following treaties :

Treaty between the United States and

Great Britain,	Aug. 9, 1842, Art.	X., 8 <i>U. S. Stat. at L.</i> , 576.
Austria,	July 3, 1856, "	I., 11 <i>Id.</i> , 692.
Bavaria,	Sept. 12, 1853, "	I., 10 <i>Id.</i> , (<i>Tr.</i>) 175.
The Two Sicilies,	Oct. 1, 1855, "	XXII., 11 <i>Id.</i> , 652.
Hayti,	Nov. 3, 1864, "	XXXIX., 13 <i>Id.</i> , 728.
Venezuela,	Aug. 27, 1860, "	XXVIII., 12 <i>Id.</i> , 1158.
Mexico,	Dec. 11, 1861, "	III., 12 <i>Id.</i> , 1200.
Dominican Republic,	Feb. 8, 1867, "	XXVIII., 15 <i>Id.</i> , (<i>Tr.</i>) 183.
Hawaiian Islands,	Dec. 20, 1849, "	XIV., 9 <i>Id.</i> , (<i>Tr.</i>) 182.

Convention between the United States and

The King of the } French,	{	Nov. 9, 1843, Art. II., 8 <i>U. S. Stat. at L.</i> , 582.
Prussia,		
(Extended to the) } North German } Confederation,	{	Feb. 22, 1868, " III., 15 <i>Id.</i> , (<i>Tr.</i>) 117.
Italy,		
King of Sweden } and Norway, }	{	Mar. 21, 1860, " II., 12 <i>Id.</i> , 1126.
Baden,		
	Jan. 30, 1857, "	I., 11 <i>Id.</i> , 714.

Convention between France and

The Grand Duchy of Saxe Weimar, Aug. 7, 1858, 7 *De Clercq*, 444.

Austria,

Nov. 13, 1855, 6 *Id.*, 579.

⁵ *Barratry.*

Convention between France and

The Grand Duchy of Saxe Weimar, Aug. 7, 1858, 7 *De Clercq*, 444.

Austria, Nov. 13, 1855, 6 *Id.*, 579.

Where a foreigner conspired in England with the master and mate of a foreign ship to cast away and destroy the same, to the prejudice of the underwriters, and the conspiracy was executed by their sinking the ship off the English coast, it was supposed that the prisoner *could not* be indicted in England for destroying the ship, as he was a foreigner, the ship was foreign, and the offense was committed on the high seas. The offense of piracy or robbery, which is against the law of nations, was not charged. The jury were directed to consider whether the prisoner was a party *in England* to a previous plan or conspiracy to destroy the ship, without reference to its destination on the high seas.

If the conspiracy to destroy was limited to the high seas, *quere*, whether it would have been a crime. *Regina v. Kohn*, 4 *Foster & Finlason's Rep.*, 68.

⁶ *Bigamy.* It has been questioned whether bigamy should be a ground of demand for extradition, except when it is clearly proved that the fact of the first marriage was concealed from the second wife, it then being treated as an injury done, through fraud, to her. *Transactions of National Association for the Promotion of Social Science*, 1866, p. 144.

⁷ *Burglary.*

Treaty between Great Britain and

Prussia, Mar. 5, 1864, *Accounts and Papers*, 1864, vol. LXVI., (35.)

Convention between the United States and

The King of France, Feb. 24, 1845, 8 *U. S. Stat. at L.*, 617.

The King of Sweden }
and Norway, } Mar. 21, 1860, 12 *Id.*, 1126. Art. II.

In the treaty between the United States and Mexico, December 11, 1861, (12 *Id.*, 1200, Art. III.,) burglary is defined, for purposes of the treaty, to be "the breaking and entering into the house of another, with intent to commit felony." And in the convention between the United States and Italy, March 23, 1868, (15 *Id.*, (*Tr.*) 130, Art. II.,) it is defined as such breaking and entering *by night*.

And the corresponding crimes included under the French law in the words *vol qualifié*.

Convention between the United States and

The King of France, Feb. 24, 1845, 8 *U. S. Stat. at L.*, 617.

⁸ *Counterfeiting.* The treaties differ very much as to what offenses of this nature are subjects of extradition; those which have been recognized as such may be stated as follows:

Counterfeiting money.

Treaty between the United States and

Venezuela, Aug. 27, 1860, Art. XXVIII., 12 *U. S. Stat. at L.*, 1158.

Hayti, Nov. 3, 1864, " XXXIX., 13 *Id.*, 728.

Convention between the United States and
 The Dominican Republic, } Feb. 8, 1867, , Art. XXVIII., 15 *U. S. Stat. at L.*, (Tr.) 183.

Making and uttering false money.

Treaty between the United States and

The Two Sicilies, Oct. 1, 1855, Art. XXII., 11 *U. S. Stat. at L.*, 652.

Fabrication or circulation of counterfeit money, whether coin or paper money.

Treaty between the United States and

Austria, July 3, 1856, Art. I., 11 *U. S. Stat. at L.*, 692.

Bavaria, Sept. 12, 1853, " I., 10 *Id.*, (Tr.) 175.

Convention between the United States and

Prussia, June 30, 1852, Art. I., 10 *U. S. Stat. at L.*, (Tr.) 100.

(Extended to the)

North German Confederation, } Feb. 22, 1868, " III., 15 *Id.*, (Tr.) 116.

Baden, Jan. 30, 1857, " I., 11 *Id.*, 714.

King of Sweden } Mar. 21, 1860, " II., 12 *Id.*, 1126.
 and Norway, }

" Fabrication, introduction, emission de fausse-monnaie contrefaçon ou altération de papier-monnaie ou emission de papier-monnaie contrefait ou altéré ; contrefaçon des poinçons servant a marquer les matières d'or et d'argent, contrefaçon des Sceaux de l'Etat et des timbres nationaux, alors même que la fabrication ou contrefaçon aurait en lieu dehors de l'Etat, qui reclame l'extradition."

Convention between France and

The Grand Duchy of Saxe Weimar, Aug. 7, 1858, 7 *De Clercq*, 444.

Austria, Nov. 13, 1855, 6 *Id.*, 579.

" Counterfeiting bank notes, public securities or money."

Treaty between Great Britain and

Prussia, Mar. 5, 1864, *Accounts and Papers*, 1864, vol. LXVI., (35.)

" *Counterfeiting public bonds, bank notes and obligations, and, in general, any title and instrument of credit whatsoever; the counterfeiting seals, dies, stamps, and marks of State and public administration, and the uttering thereof.*"

Convention between the United States and

Italy, March 23, 1868, Art. II., 15 *U. S. Stat. at L.*, (Tr.) 130.

Crime against nature.

^s *Embezzlement.* The treaties differ very much as to what offenses of this nature are subjects of extradition ; they are variously stated as follows :

" *Embezzlement by clerks and servants.*"

Treaty between Great Britain and

Prussia, Mar. 5, 1864, *Accounts and Papers*, 1864, vol. LXVI., (35.)

"Embezzlement of public moneys."

Convention between the United States and

Prussia, June 16, 1852, Art. I., 10 *U. S. Stat. at L.*, (Tr.) 98.(Extended to the)
North German } Feb. 22, 1868, " III., 15 *Id.*, (Tr.) 116.
Confederation, }Baden, Jan. 30, 1857, " I., 11 *Id.*, 714.

Treaty between the United States and

Austria, July 3, 1856, Art. I., 11 *U. S. Stat. at L.*, 692.Bavaria, Sept. 12, 1853, " I., 10 *Id.*, (Tr.) 175.Mexico, Dec. 11, 1861, " III., 12 *Id.*, 1200.*"Embezzlement by public officers, when the same is punishable with infamous punishment."*

Convention between the United States and

The King of the French, Nov. 9, 1843, Art. II., 8 *U. S. Stat. at L.*, 582.*"Embezzlement by public officers, including appropriation of public funds."*

Convention between the United States and

The King of Sweden }
and Norway, } Mar. 21, 1860, Art. II., 12 *U. S. Stat. at L.*, 1126.

Treaty between the United States and

The Two Sicilies, Oct. 1, 1855, Art. XXII., 11 *U. S. Stat. at L.*, 652.*"Embezzlement by public officers, or by persons hired or salaried, to the detriment of their employers."*

Treaty between the United States and

Venezuela, Aug. 27, 1860, Art. XXVIII., 12 *U. S. Stat. at L.*, 1159.Hayti, Nov. 3, 1864, " XXXIX., 13 *Id.*, 728.And the same was added to the treaty between the United States and France, by an additional article. 11 *U. S. Stat. at L.*, 741.

Convention between the United States and

The Swiss Con- }
federation, } Nov. 25, 1850, Art. XIV., 11 *U. S. Stat. at L.*, 594.The Dominican }
Republic, } Feb. 8, 1867, " XXXVIII., 15 *Id.*, (Tr.) 183.*"Embezzlement of public moneys, committed within the jurisdiction of either party, by public officers, or depositaries; embezzlement by any person hired or salaried, to the detriment of their employers."*

Convention between the United States and

Italy, Mar. 23, 1868, Art. II., 15 *U. S. Stat. at L.*, (Tr.) 130.

"Soustractions et concussions commises par des depositaires (ou lassiers) revetus d'un caractère public, des valeurs qu'ils avient entre les mains a raison de leur fonctions; soustractions commises par des cassiers (ou depositaires) d'établissements publics, ou des maisons de commerce, mais seulement dans le cas ou ces soustractions sont accompagnées des circonstances qui leur donnent le caractère de crime."

Convention between France and

The Grand Duchy of Saxe Weimar, Aug. 7, 1858, 7 *De Clercq*, 444.
Austria, Nov. 13, 1855, 6 *Id.*, 579.

In an extradition treaty, the terms "public officers" or "public depositaries" do not comprehend officers of a railroad company, but only signify officers or depositaries of the government, in some of its branches or degrees. 8 *Opinions of U. S. Attorneys-General*, p. 106.

False pretenses or false tokens.

¹⁰ *Forgery.*

Treaty between Great Britain and

Prussia, Mar. 5, 1864, *Accounts & Papers*, 1864, vol. LXVI., (35.)
Denmark, Apr. 15, 1862, " " 1862, vol. LXIII., (35.)

Treaty between the United States and

Great Britain, Aug. 9, 1842, Art. X., 8 *U. S. Stat. at L.*, 576.
Austria, July 3, 1856, " I., 11 *Id.*, 692.
Bavaria, Sept. 12, 1853, " I., 10 *Id.*, (Tr.), 175.
Venezuela, Aug. 27, 1860, " XXVIII., 12 *Id.*, 1159.
Hayti, Nov. 3, 1864, " XXXIX., 13 *Id.*, 728.
Hawaiian Islands, Dec. 20, 1849, " XIV., 9 *Id.*, (Tr.), 182.

Convention between the United States and

The King of the } Nov. 9, 1843, Art. II., 8 *U. S. Stat. at L.*, 582.
French, }
Prussia, June 16, 1852, " I., 10 *Id.*, (Tr.), 100.
(Extended to the) }
North German } Feb. 22, 1868, " III., 15 *Id.*, (Tr.), 116.
Confederation, }
Baden, Jan. 30, 1857, " I., 11 *Id.*, 714.
The Swiss Con- } Nov. 25, 1850, " XIV., 11 *Id.*, 594.
federation, }
The Dominican } Feb. 8, 1867, " XXVIII., 15 *Id.*, (Tr.), 183.
Republic, }

In the treaty between the United States and Mexico, Dec. 11, 1861, (12 *U. S. Stat. at L.*, 1200, Art. III.,) there is added, "including the forging or marking, or knowingly passing or putting in circulation, counterfeit coin, or bank notes, or other paper current as money, with intent to defraud any person or persons." And the same provision was added to the treaty with France, Feb. 10, 1858, by an additional article. 11 *Id.*, 741,

In the treaty between the United States and The Two Sicilies, Oct. 1 1855, (11 *U. S. Stat. at L.*, 652, Art. XXII.,) there is added, "including forging of evidences of public debt, bank bills, and bills of exchange."

In the convention between the United States and Italy, March 23, 1868, (15 *U. S. Stat. at L.*, (Tr.), 130, Art. II.,) forging is defined, for the purposes of the treaty, as "the utterance of forged papers, the counterfeiting of public, sovereign or government acts."

"The utterance or the emission of forged papers," is also specified by the following:

Treaty between the United States and

- Great Britain, Aug. 9, 1842, Art. X., 8 *U. S. Stat. at L.*, 576.
 Bavaria, Sept. 12, 1853, " I., 10 *Id.*, (Tr.) 175.
 Hayti, Nov. 3, 1864, " XXXIX., 13 *Id.*, 728.
 Hawaiian Islands, Dec. 20, 1849, " XIV., 9 *Id.*, (Tr.) 182.

Convention between the United States and

- Prussia, June 16, 1852, Art. I., 10 *U. S. Stat. at L.*, (Tr.) 100,
 (Extended to the) }
 North German } Feb. 22, 1868, " III., 15 *Id.*, (Tr.) 116.
 Confederation, }
 The Swiss Con- } Nov. 25, 1850, " XIV., 11 *Id.*, 594.
 federation, }

"Faux en écriture publique ou authentique et de commerce, y compris la contrefaçon des effets publics de quelque nature qu'ils soient et de billets de Barque usage de ces faux litres. Sont exceptés les faux non accompagnés des circonstances qui leur donnent le caractère de crime."

Convention between France and

- The Grand Duchy of Saxe Weimar, Aug. 7, 1858, 7 *De Clercq*, 444.
 Austria, Nov. 13, 1855, 6 *Id.*, 579.

It is forgery in France, within the provisions of the extradition treaty, for a royal notary to insert, in an authentic deed, false statements as matter of fact. Matter of Metzger, 5 *New York Legal Observer*, 83.

Proof of the forging of checks on the Communal Chest of Breslaw, in Prussia, is sufficient cause for the issue of a warrant for judicial inquiry, with a view to the extradition of the criminal under the treaty between the United States and Prussia. 6 *Opinions of U. S. Attorneys-General*, p. 761.

By the law of the State of New York, "every person who, with intent to defraud, shall make any false entry, &c., in any book of accounts kept by any moneyed corporation in this State, &c., shall, upon conviction, be adjudged guilty of forgery in the third degree." *Held*, that a person offending against this statute was not guilty of forgery, within the meaning of the extradition treaty between the United States and Great Britain, nor of the act passed to give it effect, and could not therefore be surrendered on requisition. *Re Windsor*, *The Jurist*, vol. XI., 807.

¹¹ *Kidnapping*. "Defining the same to be, the taking and carrying away of free persons by force or deception."

Treaty between the United States and

- Mexico, Dec. 11, 1861, Art. III., 12 *U. S. Stat. at L.*, 1200.

See, also, *False imprisonment*, below.

¹² *Larceny*.

Treaty between Great Britain and

- Prussia, Mar. 5, 1864, *Accounts and Papers*, 1864, vol. LXVI., (35.)

Larceny is not among the cases provided for by any convention between the United States and Great Britain, for the extradition of criminals. Neither is constructive larceny or embezzlement by private persons. 6 *Opinions of U. S. Attorneys-General*, pp. 85, 431.

Larceny of cattle, or other goods and chattels of the value of twenty-five dollars or more, when the same is committed within the frontier States or Territories of either nation.

Treaty between the United States and

Mexico, Dec. 11, 1861, Art. III., 12 *U. S. Stat. at L.*, 1200.

Grand larceny. "Vol, lorsqu'il a été accompagné des circonstances qui lui donne le caractère de crime."

Convention between France and

The Grand Duchy of Saxe Weimar, Aug. 7, 1858, 7 *De Clercq*, 444.

Austria, Nov. 13, 1855, 6 *Id.*, 579.

Maiming. See *Mutilation*, below.

Manslaughter.

¹³ *Murder.*

Treaty between the United States and

Great Britain, Aug. 9, 1842, Art. X., 8 *U. S. Stat. at L.*, 576.

Hawaiian Islands, Dec. 20, 1849, " XIV., 9 *Id.*, (*Tr.*) 182."

Austria, July 3, 1856, " I., 11 *Id.*, 692.

Bavaria, Sept. 12, 1853, " I., 10 *Id.*, (*Tr.*) 175.

Convention between the United States and

Prussia, June 16, 1852, Art. I., 10 *U. S. Stat. at L.*, (*Tr.*) 100.

(Extended to the)
North German } Feb. 22, 1868, " III., 15 *Id.*, (*Tr.*) 116.
Confederation, }

Baden, Jan. 30, 1857, " I., 11 *Id.*, 714.

Under the British treaty it is held, that a person charged with murder on the high seas, on board a British vessel, must be given up when demanded by Great Britain. *Query?* Whether evidence of justification of the killing can be received in the proceedings. *Re Bennett*, 11 *Law Times Rep.*, 488. For murder on the high seas, on board a British vessel, is not committed within the jurisdiction of the United States, although the vessel comes into a port of the United States, but is committed within the exclusive jurisdiction of Great Britain.

"*Murder, comprehending the crimes designated (by the French penal Code) by the terms 'd'assassinat, de parricide, d'infanticide, et d'empoisonnement.'*"

Convention between the United States and

The King of the } Nov. 9, 1843, Art. II., 8 *U. S. Stat. at L.*, 582.
French, }

Italy, Mar. 23, 1868, " II., 15 *Id.*, (*Tr.*) 130.

The Swiss Con- } Nov. 25, 1850, " XIV., 11 *Id.*, 594.
federation, }

The King of Swe- } Mar. 21, 1860, " II., 12 *Id.*, 1126,
den & Norway, }

The Dominican } Feb. 8, 1867, XXVIII., 15 *Id.*, (*Tr.*) 183.
Republic, }

Treaty between the United States and

- The Two Sicilies, Oct. 1, 1855, Art. XXII., 11 *U. S. Stat. at L.*, 652.
 Mexico, Dec. 11, 1861, " III., 12 *Id.*, 1200.
 Venezuela, Aug. 27, 1860, " XXVIII., 12 *Id.*, 1159.
 Hayti, Nov. 3, 1864, " XXXIX., 13 *Id.*, 728.

Treaty between Great Britain and

- Prussia, Mar. 5, 1864, *Accounts and Papers*, 1864, Vol. LXVI., (35.)
 Denmark, Apr. 15, 1862, " " 1862, Vol. LXIII., (35.)

To the same effect, see convention between France and

- The Grand Duchy of Saxe Weimar, Aug. 7, 1858, 7 *De Clercq*, 444.
 Austria, Nov. 13, 1855, 6 *Id.*, 579.

"*Attempt to commit murder*," is included in many of the preceding treaties.

"*Assault, with intent to commit murder*," is specified in others. See, also, *Assault*, in this note, below.

¹⁴ *Perjury*. Faux témoignage, lorsqu'il est accompagné de circonstances qui lui donnent le caractère de crime; subornation de témoins.

Convention between France and

- The Grand Duchy of Saxe Weimar, Aug. 7, 1858, 7 *De Clercq*, 444.
 Austria, Nov. 13, 1855, 6 *Id.*, 579.

¹⁵ *Piracy*.

Treaty between the United States and

- Great Britain, Aug. 9, 1842, Art. X., 8 *U. S. Stat. at L.*, 576.
 Austria, July 3, 1856, " I., 11 *Id.*, 692.
 Bavaria, Sept. 12, 1853, " I., 10 *Id.*, (Tr.) 175.
 The Two Sicilies, Oct. 1, 1855, " XXII., 11 *Id.*, 652.
 Mexico, Dec. 11, 1861, " III., 12 *Id.*, 1200.
 Venezuela, Aug. 27, 1860, " XXVIII., 12 *Id.*, 1159.
 Hayti, Nov. 3, 1864, " XXXIX., 13 *Id.*, 728.
 Hawaiian Islands, Dec. 20, 1849, " XIV., 9 *Id.*, (Tr.) 182.

Convention between the United States and

- Prussia, June 16, 1852, Art. I., 10 *U. S. Stat. at L.*, (Tr.) 100.
 (Extended to the)
 North German } Feb. 22, 1868, " III., 15 *Id.*, 116.
 Confederation, }
 Italy, Mar. 23, 1868, " II., 15 *Id.*, (Tr.) 130.
 Baden, Jan. 30, 1857, " I., 11 *Id.*, 714.
 The Swiss Con- } Nov. 25, 1850, " XIV., 11 *Id.*, 594.
 federation, }
 The King of Swe- } Mar. 21, 1860, " II., 12 *Id.*, 1126.
 den & Norway, }

It was held by CROMPTON, BLACKBURN and SLEE, J. J., (dissentient COCKBURN, C. J.) that piracy, in the treaty between the United States and Great Britain, August 9, 1842, (8 *U. S. Stat. at L.*, 576, Art. X.) must not be understood in the sense of piracy, by the law of nations, but of acts made piracy by the municipal law of the United States. *Re Tivnan*, 5 *Best & Smith Q. B.*, 645.

Lewis, in his pamphlet on *Foreign Jurisdiction and the Extradition of Criminals*, (p. 39,) states his opinion as to the meaning of "piracy," in conformity with the decisions of the majority of the court in *Tivnan's Case*. Reporter's Note, in *Re Tivnan*, 5 *Best & Smith Q. B.*, 696.

In the time of peace, any act of depredation upon a ship is *prima facie* an act of piracy; but in time of war between two countries, the presumption is, that depredation by one of them on the ship of the other is an act of legitimate warfare. It is immaterial whether the act was done by soldiers or volunteers, and whether it was commanded by the belligerent State, or when done, ratified by it. *Re Tivnan*, 5 *Best & Smith Q. B.*, 645.

¹⁶ *Rape.*

Treaty between the United States and

Mexico, Dec. 11, 1861, Art. III., 12 *U. S. Stat. at L.*, 1200.

Venezuela, Aug. 27, 1860, " XXVIII., 12 *Id.*, 1159.

Hayti, Nov. 3, 1864, " XXXIX., 13 *Id.*, 728.

Convention between the United States and

The King of the }
French, } Nov. 9, 1843, Art. II., 8 *U. S. Stat. at L.*, 582.

Italy, Mar. 23, 1868, " II., 15 *Id.*, (*Tr.*) 130.

The Swiss Con- }
federation, } Nov. 25, 1850, " XIV., 11 *Id.*, 594.

The King of Swe- }
den & Norway, } Mar. 21, 1860, " II., 12 *Id.*, 1126.

The two Sicilies, Oct. 1, 1855, " XXII., 11 *Id.*, 652.

The Dominican }
Republic, } Feb. 8, 1867, " XXVIII., 15 *Id.*, (*Tr.*) 183.

"Viol; attentat à la pudeur consommé ou tenté avec violence; attentat à la pudeur consommé ou tenté même sans violence; sur une personne au sujet de laquelle, et en considération de son âge, un pareil attentat constituerait un crime."

Convention between France and

The Grand Duchy of Saxe Weimar, Aug. 7, 1858, 7 *De Clercq*, 444.

Austria, Nov. 13, 1855, 6 *Id.*, 579.

¹⁷ *Robbery.*

Treaty between the United States and

Great Britain, Aug. 9, 1842, Art. X., 8 *U. S. Stat. at L.*, 576.

Austria, July 3, 1856, " I., 11 *Id.*, 692.

Bavaria, Sept. 12, 1853, " I., 10 *Id.*, (*Tr.*) 175.

Hayti, Nov. 3, 1864, " XXXIX., 13 *Id.*, 728.

Hawaiian Islands, Dec. 20, 1849, " XIV., 9 *Id.*, (*Tr.*) 182.

Convention between the United States and

The King of Swe- }
den & Norway, } Mar. 21, 1860, Art. II., 12 *U. S. Stat. at L.*, 1126.

King of France, Feb. 24, 1845, 8 *Id.*, 617.

Prussia, June 16, 1852, " I., 10 *Id.*, (*Tr.*) 100.

(Extended to the)
 North German } Feb. 22, 1868, " III., 15 *Id.*, (*Tr.*) 116.
 Confederation, }

Baden, Jan. 30, 1857, " I., 11 *Id.*, 714.

Other treaties define or restrict the term as follows :

" *Robbery, with violence to the person robbed.*"

Treaty between Great Britain and

Prussia, Mar. 5, 1864, *Accounts & Papers*, 1864, vol. LXVI., (35.)

" Robbery, defining the same to be, the felonious and forcible taking from the person of another goods or money to any value, by violence or putting him in fear."

Convention between the United States and

Italy, Mar. 23, 1868, Art. II., 15 *U. S. Stat. at L.*, (*Tr.*) 130.

Treaty between the United States and

Mexico, Dec. 11, 1861, Art. III., 12 *U. S. Stat. at L.*, 1200.

" *Robbery, with violence, intimidation, or forcible entry of an inhabited house.*"

Treaty between the United States and

The Two Sicilies, Oct. 1, 1855, Art. XXII., 11 *U. S. Stat. at L.*, 652.

Convention between the United States and

The Swiss Con- } Nov. 25, 1850, Art. XIV., 11 *U. S. Stat. at L.*, 594.
 federation, }

The Dominican } Feb. 8, 1867, " XXVIII., 15 *Id.*, (*Tr.*) 183.
 Republic, }

The treaty between the United States and Venezuela, Aug. 27, 1860, (12 *U. S. Stat. at L.*, 1159, Art. XXVIII.,) contains the same provision,^a except that it refers to private houses, and is not restricted to inhabited houses.

The [treaty between the United States and the King of the French adds :

" And the corresponding crimes included under the French law, in the words '*vol qualifié.*'"

Slave Trading.

¹⁵ *Law of nations.* Offenses against any provision of this Code, the violation of which is declared to be a public offense, committed either within the jurisdiction of the nation making the demand, or against its rights, or the rights of its members. But see note 6, to Article 210, above.

The following list exhibits certain offenses which have also been made the subjects of extradition by several recent French and British treaties, and by American treaties ; and there are added certain crimes which, though perhaps not included in any treaty, still are worthy of consideration in framing a complete and efficient system.

Abduction. See *Kidnapping*, note 11, above ; and *False Imprisonment*, below.

Accessories. These provisions should perhaps be extended to the case of persons guilty in one country of being accessory before the fact to an

offense committed in another country, so as to enable the former nation to demand their extradition from the authorities of a third nation to which they may have fled.

In the case of Allsop, a British subject, having been charged in Great Britain with being an accessory before the fact to the murder of a Frenchman in Paris, and having escaped to the United States, the law officers of the Crown were of the opinion that the existing treaties did not sanction a demand upon the United States for his surrender to Great Britain, because he was not charged with the crime of murder committed within the jurisdiction of the British Crown. Op'n. of Sir J. D. Harding, Sir Fitzroy Kelly and Sir Hugh Cairns, *Forsyth's Cases and Opinions in Constitutional Law*, p. 368.

Assault. "Coups et blessures volontaires ayant occasioné soit la mort, soit une maladie ou incapacité de travail, pendant plus de vingt jours."

Convention between France and

The Grand Duchy of Saxe Weimar, Aug. 7, 1858, 7 *De Clercq*, 444.
Austria, Nov. 13, 1855, 6 *Id.*, 579.

Assault, with intent to kill. See *Murder*, note 13, above.

Convention between France and

The Grand Duchy of Saxe Weimar, Aug. 7, 1858, 7 *De Clercq*, 444.
Austria, Nov. 13, 1855, 6 *Id.*, 579.

Boundaries. *Injuries to national boundaries.*

Conspiracy to commit a felony. "Association de Malfauteurs."

Convention between France and

The Grand Duchy of Saxe Weimar, Aug. 7, 1858, 7 *De Clercq*, 444.
Austria, Nov. 13, 1855, 7 *Id.*, 579.

Duelling. It has been objected that this should not be a ground of a demand for extradition upon a nation whose laws do not make it an offense. *Transactions of National Association for the Promotion of Social Science*, 1866, p. 144.

Extortion. "Extorsion des titres et des signatures."

Convention between France and

The Grand Duchy of Saxe Weimar, Aug. 7, 1858, 7 *De Clercq*, 444.
Austria, Nov. 13, 1855, 6 *Id.*, 579.

False imprisonment. "Sequestration ou arrestation, ou detention illegale des personnes."

Convention between France and

The Grand Duchy of Saxe Weimar, Aug. 7, 1858, 7 *De Clercq*, 444.
Austria, Nov. 13, 1855, 6 *Id.*, 579.

' *Forfeiture of recognizances in criminal cases.*

Frauds by persons holding positions of trust. Extradition cannot be demanded of France by the United States, in the case of a fraudulent breach of trust by private persons, notwithstanding that such offense is made grand larceny by the statutes of the *State* where committed.

The terms of the treaty, bearing on the subject, apply only to embez

zlement by public depositaries. 7 *Opinions of U. S. Attorneys-General*, p. 643.

Fraudulent bankruptcies.

Treaty between Great Britain and

Prussia, Mar. 5, 1864, *Accounts and Papers*, 1864, vol. LXVI., (35.)

Denmark, Apr. 15, 1862, " " 1862, vol. LXIII., (35.)

Convention between France and

The Grand Duchy of Saxe Weimar, Aug. 7, 1858, 7 *De Clercq*, 444.

Austria, Nov. 13, 1855, 6 *Id.*, 579.

Fraudulent insolvencies.

Felonious homicide. See *Murder*, note 13, above.

Malicious injuries to emigrants, international works, &c.

" *Mutilation.*"

Treaty between the United States and

Mexico, Dec. 11, 1861, Art. III., 12 *U. S. Stat. at L.*, 1200.

" *Castration.*"

Convention between France and

The Grand Duchy of Saxe Weimar, Aug. 7, 1858, 7 *De Clercq*, 444.

Austria, Nov. 13, 1855, 6 *Id.*, 579.

Mutiny. "Mutiny on board a ship, whenever the crew, or a part thereof, by fraud or violence against the commander, have taken possession of the vessel."

Convention between the United States and

Italy, Mar. 23, 1868, Art. II., 15 *U. S. Stat. at L.*, (Tr.), 130

The King of Swe- } Mar. 21, 1860, " II., 12 *Id.*, 1126.
den & Norway, }

Seduction.

Smuggling.

Threatening. "Menaces d'attentat contre les personnes ou les propriétés."

Convention between France and

The Grand Duchy of Saxe Weimar, Aug. 7, 1858, 7 *De Clercq*, 444.

Austria, Nov. 13, 1855, 6 *Id.*, 579.

Exceptions. The following treaties seem to make a general restriction of the enumerated crimes to cases where the crimes mentioned are subject to infamous punishment.

Convention between the United States and

Italy, Mar. 23, 1868, Art. II., 15 *U. S. Stat. at L.*, (Tr.), 130.

The Swiss }
Confed- } Nov. 25, 1850, " XIV., 11 *Id.*, 594.
eration, }

The Domin- }
ican Re- } Feb. 8, 1857, "XXVIII., 15 *Id.*, (Tr.), 183.
public, }

Treaty between the United States and

Venezuela, Aug. 27, 1860, Art. XXVIII., 12 *U. S. Stat. at L.*, 1159.

Imprisonment for a term of years is infamous punishment, within this clause. 12 *Opinions of U. S. Attorneys-General*, 326.

Exception of certain offenses.

215. The provisions of this Section do not apply in any manner to cases in any of the following classes :

1. Crimes or offenses of a purely political character ;¹

2. Any offense committed in furthering civil war, insurrection or political commotion, which, if committed between belligerents, would not be a crime ;²

3. Desertions from, or evasions of, military or naval service ;³

4. Offenses committed before this Section took effect ;⁴ and,

5. Offenses which, by reason of the lapse of time, or any other cause, the demanding nation cannot lawfully punish.⁵

¹ This subdivision is suggested by Art. V. of the convention between the United States and France, 8 *U. S. Stat. at L.*, 582 ; and is usual in other treaties. *Bluntschli*, (*Droit Intern. Copié*, § 396,) says, that this exception is recognized in all the recent treaties.

As to what are political offenses, see 7 *De Clercq*, 151.

The abuse of asylum is prohibited by Article 207.

² This subdivision is suggested in connection with, or as a substitute for, the preceding, in order to define and secure the right of *asylum*, as understood by the United States. Several French treaties contain a provision that an attempt against the person of a foreign sovereign, or against that of the members of his family, where the attempt constitutes the act either of murder "d'assassinat ou empoisonnement," shall not be considered as a political offense.

Additional convention of Sept. 22, 1866, to convention of Nov. 22, 1834, between France and Belgium, 7 *De Clercq*, 151.

Convention between France and

The Grand Duchy of Saxe Weimar, Aug. 7, 1858, 7 *De Clercq*, 444.

Great Britain has steadily refused to surrender political offenders, or to deny them asylum. Extradition of political offenders obtains between the States of the German Confederation. But *Heffter* states this as an exception to the established principle. *Wheaton's Elem. Int. Law*, Pt. II., Ch. II., § 13, note.

³ In no treaty do the United States include these, except so far as de

serters from naval service may be reclaimed by the consul. See Section II. of this Chapter, on EXTRADITION OF DESERTERS.

There are conventions between some European countries—*e. g.*, between Russia and Prussia, Aug. 8, 1857—for the mutual surrender of deserters, and persons owing future *military service*. *Dana's Wheaton*, § 120, note 79.

There are also conventions between European powers, for the restitution of arms, horses and equipments of deserters. See, for instance, 7 *De Clercq*, pp. 411, 412, 442, 496, 511.

⁴ This exception is usual in the American treaties.

⁵ Some of the French treaties have made the limitation laws of the nation where the offender is found, a bar to his extradition.

It may be thought desirable to add such a provision as the following :

No nation is bound to deliver up, under the provisions of this Section, a person who, according to the provisions of this Code, is a member of the same at the time the demand for his surrender is made. *Fiore*, (*Nouveau Droit International*, vol. 1, p. 329,) says, this is the generally received rule.

Such a provision is contained in the following treaties :

Convention between the United States and

The King of Sweden & Norway, } Mar. 21, 1860, Art. IV., 12 *U. S. Stat. at L.*, 1126.

Prussia, June 16, 1852, " III., 10 *Id.*, (*Tr.*) 101.

(Extended to the) }
North German } Feb. 22, 1868, " III., 15 *Id.*, (*Tr.*) 116.
Confederation, }

Baden, Jan. 30, 1857, " II., 11 *Id.*, 715.

Treaty between the United States and

Austria, July 3, 1856, Art. II., 11 *U. S. Stat. at L.*, 693.

Bavaria, Sept. 12, 1853, " III., 10 *Id.*, (*Tr.*) 176.

Mexico, Dec. 11, 1861, " VI., 12 *Id.*, 1202.

Hayti, Nov. 3, 1864, " XLI., 13 *Id.*, 728.

It is understood that the British extradition treaties all provide, that neither party shall surrender its own subjects. *Cases & Opinions in Constitutional Law*, by *Forsyth*, p. 371, note.

France is understood to hold the same rule. Letter of Mr. Lawrence, *Transactions of National Association for Promotion of Social Science*, 1866, p. 156.

And see the convention between France and

The Grand Duchy of Saxe Weimar, Aug. 7, 1858, 7 *De Clercq*, 444.

Austria, Nov. 13, 1855, 6 *Id.*, 579.

Bluntschli, (*Droit Intern. Copié*, § 399,) states the exception of citizens as one now recognized even by the States which admit the obligation of extradition. But it has, as he says, grave inconvenience for the administration of criminal justice, and had better be abandoned.

Dana, (in his edition of *Wheaton*, § 120, note 77,) says, that the obligation or willingness of a State to surrender *its own citizens*, who are charged with crimes committed abroad, and have sought refuge in their own country, is affected by the consideration whether such State punishes its citizens for crimes so committed.

Order of arrest.

216. The executive authority of a nation upon which a requisition is made, accompanied by due proof of a foreign conviction or warrant of arrest, or other presumptive evidence that the case is one within the provisions of this Section, must direct the arrest of the accused for examination by the proper judicial authority.

A *mandat d'arret*, issued upon suitable evidence, by the proper judicial authority of France, and setting forth the crime imputed to the accused, is sufficient to justify the preliminary action of the President for the arrest of the alleged fugitive, leaving the ulterior question of his actual extradition to depend on the full evidence of criminality then, as it should appear from the dispatch of the Minister of Foreign Affairs, on its way from France. *Lawrence's Wheaton*, p. 242, note.

The President, in granting his order, at the request of a foreign government, for the purpose of commencing proceedings in extradition, does not need such evidence of the criminality of the party accused as would justify an order of extradition, but only *prima facie* evidence. 6 *Opinions of U. S. Attorneys-General*, p. 217.

The application for surrender, under the treaty of extradition of 1842, between the United States and Great Britain, may be made by the British Minister, and need not be founded on a previous indictment found against the prisoner, by the British tribunals, or on any warrant issuing therefrom. *Matter of British Prisoners*, 1 *Woodbury & Minot's U. S. Circuit Court Rep.*, 66.

A mere notification, by the *local officer* of a foreign government, of the escape of an alleged criminal, is not sufficient *prima facie* evidence of a case to justify the preliminary action of the President. 7 *Opinions of the U. S. Attorneys-General*, p. 6.

The United States will not make demand for extradition of a person alleged to be a fugitive from the justice of one of the United States, and to have taken refuge in a foreign country, except on the exhibition of a judicial "*warrant*," duly issued, on sufficient proof, by the local authority of the State in which the crime is alleged to have been committed. 6 *Opinions of U. S. Attorneys-General*, p. 485.

Clarke, in his *Treatise on Extradition*, (pp. 96, 98,) states the practice, under the treaties between Great Britain and France, as follows :

"Demands by Great Britain upon France are always made by the Ambassador in Paris, in the name of the English government, directly upon the French government, and are supported by a warrant of arrest, issued by a magistrate in England, and copies of the depositions upon which it was founded. These last, however, are not necessary, the French authorities being contented to deliver up the fugitive upon the production of the warrant of arrest only."

"The papers are always taken to France by a police officer able to speak to the identity of the accused. Upon this, the demand is considered by the French government; and if it is granted, the fugitive is arrested and given up, without any investigation by a French court. The matter is purely one of State, with which no legal tribunal is competent to deal."

"A demand in extradition upon England must be made upon one of the principal Secretaries of State, the Chief Secretary of the Lord-Lieutenant of Ireland, or the Governor of any foreign colony or possession of her Majesty, by the Ambassador, or other diplomatic agent of the foreign government."

The demand need not be accompanied by any copies of depositions, or even a warrant of arrest issued in the foreign country; but it is usual for the Secretary of State to require some *prima facie* evidence of guilt to be laid before him. If, on consideration, he thinks the surrender should be granted, he issues his warrant, signifying that this requisition has been made, and requiring all magistrates to govern themselves accordingly, and to aid in apprehending the fugitive, and committing him to prison, to be delivered up pursuant to the treaty. The warrant is then taken before a magistrate, who, on the production of the foreign warrant of arrest, and also of some evidence that the accused has committed an offense within the treaty, issues his warrant of arrest.

The American practice is thus stated:

The mode to be pursued in proceedings for the extradition of criminals, is to prefer a complaint to a judge or other magistrate, setting out the offense charged to have been committed, on oath; whereupon, the judge or magistrate is authorized to issue a warrant for the apprehension of the person accused, and upon his being brought before him, to hear and determine the evidence of his criminality; and if, on such hearing, the evidence be deemed sufficient to sustain the charge, to certify the same to the proper executive authority, that a warrant may issue for the surrender of such fugitive. 4 *Opinions of U. S. Attorneys-General*, p. 201.

To similar effect, see 9 *Id.*, p. 379.

But, if requested, the *President* will issue the previous authorization, thought to be necessary by a portion of the court, in *Re Kaine*, 14 *Howard's U. S. Sup. Ct. Rep.*, 103. 6 *Opinions U. S. Attorneys-General*, p. 91.

In this respect, however, the extradition treaties of the United States seem to be of two classes. The treaty between the United States and Austria, July 3, 1856, (11 *U. S. Stat. at L.*, 692, Art. I.,) in its terms appears to contemplate an arrest *by judicial authority, in the first instance*, upon a complaint made under oath, and that the judicial decision, if against the accused, shall be certified to the executive authorities, in order that a warrant for surrender may issue.

And of the same character are the provisions in the treaty between the United States and

Great Britain, Aug. 9, 1842, Art. X., 8 *U. S. Stat. at L.*, 576.

Bavaria, Sept. 12, 1853, " I., 10 *Id.*, (*Tr.*,) 175.

Convention between the United States and

Prussia,	June 16, 1852, Art. I., 10 <i>U. S. Stat. at L., (Tr.,)</i> 100.
(Extended to the)	
North German	} Feb. 22, 1868, " III., 15 <i>Id., (Tr.,)</i> 116.
Confederation,	
Baden,	Jan. 30, 1857, " I., 11 <i>Id.,</i> 714.

On the other hand, the more recent treaties—for example, the convention between the United States and Italy, March 23, 1868, (15 *U. S. Stat. at L., (Tr.,)* 131, Art. V.), requires a copy of the foreign warrant, or of the depositions upon which it was granted, to be *forwarded, in the first instance*, to the Executive and authorities: the executive then to issue a warrant for the arrest of the accused, and his examination before the proper judicial authority.

The provisions presented in this draft embrace both methods.

In one case at least, it has been stipulated that the government of a nation might, before producing documentary evidence, demand the immediate and provisional arrest of the accused or convict; but compliance with the demand was left optional with the government on which the demand was made. When such provisional arrest was granted, the documentary evidence was required to be transmitted within two months, without which the person arrested was entitled to his discharge.

Convention between France and

The Grand Duchy	} Aug. 7, 1858, 7 <i>De Clercq</i> , 444, Art. IV.
of Saxe Weimar,	

This provision seems, however, too dangerous to be inserted in an international Code.

Arrest in anticipation of requisition.

217. Upon presumptive evidence of an offense, within the provisions of this Section, the local tribunals, which would have cognizance of it, if committed within their jurisdiction, may arrest the person accused, and detain him for a reasonable time, to afford the foreign government opportunity to make requisition for his surrender. But the evidence must be sufficient to commit for trial, if the offense were committed within the local jurisdiction; and if no requisition be made within one month thereafter, the accused will be entitled to his discharge.

This is in substance the rule laid down by Chancellor KENT, on the review of continental and English authorities, in the Case of Washburn, 4 *Johnson's New York Chancery Rep.*, 106.

To the same effect are *Mure v. Kaye*, 4 *Taunton's Rep.*, 34; *Matter of British Prisoners*, 1 *Woodbury & Minot's U. S. Circuit Ct. Rep.*, 66.

These authorities, however, are opposed by others.

In the *United States v. Davis*, 2 *Sumner's U. S. Circ. Ct. Rep.*, 482, it is said, upon principles of international law, and independent of statute or treaty, that courts of justice are neither bound nor authorized to remand prisoners for trial to a foreign government whose laws they are said to have violated. See, also, 1 *Opinions of U. S. Attorneys-General*, p. 510; 2 *Id.*, p. 359.

And in the *Matter of Henrich*, 5 *Blatchford's U. S. Circuit Court Rep.*, 414; *Ex-parte Henrich*, 10 *Cox's Criminal Cases*, 626, it is said, that it should seem indispensable that a demand for the surrender of the fugitive should be first made upon the executive authorities of the government, and a mandate of the President obtained, before the judiciary is called upon to act. That at all events, this would be the better practice, and one in keeping with the dignity to be observed between nations in such delicate and important transactions.

That an executive *order of surrender* to a foreign government is purely a national act, is not open to controversy; nor can it be doubted that this executive act must be performed through the Secretary of State, by order of the President. But it does not follow that Congress is excluded from vesting authority in judicial magistrates to arrest and commit, preparatory to a surrender. In *re Káine*, 14 *Howard's U. S. Sup. Ct. Rep.*, 103.

The original arrest may be made by the executive, or, *if the statute so provide*, it may also be made by the court or the examining magistrate. *Dana's Wheaton*, § 115, note 73.

In the *Commonwealth v. Deacon*, (10 *Sergeant & Rawle's Rep.*, 125,) it was held, that in the absence of an extradition treaty, no State magistrate, upon a charge by a private person, can cause a fugitive from a foreign country to be arrested for a crime committed in that foreign country, in order to afford an opportunity to the executive of the United States to deliver him up to the government of that country.

See, in this connection, the note to Article 216.

Preliminary investigation.

218. Before making the arrest or surrender of an alleged fugitive from justice, the nation from which it is asked may determine for itself, upon a preliminary investigation, whether it is presumptively established that the person charged has committed the offense, as defined by this Code; or, in the case of a convict, that he has wrongfully escaped punishment.

It was held, in the *Matter of Metzger*, (5 *N. Y. Legal Observer*, 83; see, also, 1 *Barbour's New York Rep.*, 248, and 5 *Howard's U. S. Sup. Ct. Rep.*, 176,) that the test of what constituted the crime is the law of the country which demands the fugitive, not that of the nation upon which the demand is made. In *Dana's Wheaton*, (§ 117, note 75, p. 186,) it is said, that the Extradition Acts are restricted to the cases which have the essential and substantial elements of the offenses specified, and according to

the law of *both* countries; and the mere fact that an act which, according to the general law of either country, has not the character of a particular offense, is treated as such by the law of one of them, does not bring a case within the treaty. We must assume that the terms employed are used in a sense common to both parties to the treaty.

Compare *Re Windsor*, (6 *Best & Smith's Q. B. Rep.*, 522,) where it was held that the enumeration of crimes in the extradition treaty refers to such acts as amount to any of those offenses, according to the law of England and the general law of the United States, and does not comprise offenses which are only such by the local legislation of some particular State of the American Union; and *Re Tivnan*, (5 *Best & Smith's Q. B. Rep.*, 696,) where piracy was taken as understood according to the law of the United States rather than the law of nations.

Rules for conducting investigation.

219. The proceedings for the arrest of an alleged fugitive from justice, and the judicial investigation of the charge, must be conducted according to the rules established for similar preliminary proceedings, before the same courts or magistrates, in the case of a person charged with the commission of a like offense within the country.

Clarke, (*Extradition*, p. 99,) states the rules for the conduct of the investigation as follows, in the case of a demand in extradition upon Great Britain:

"The prisoner being apprehended and brought before a magistrate, three things are necessary: 1. The identity of the prisoner must be proved; 2. Such evidence of criminality must be given as, according to the laws of the place where he has been found, would justify his apprehension and commitment for trial if the crime or offense had been there committed. Some evidence upon this point is necessary in the first instance, but the magistrate has the usual powers of remand, if it be not sufficient for commitment; 3. The magistrate must be satisfied, either upon the facts of the case or by the evidence of a foreign lawyer, that the offense charged comes within the definition of the crime contained in the treaty. This evidence must be taken in the prisoner's presence, in the usual way. The evidence of criminality, however, may consist, either wholly or in part, of copies of depositions taken by a judge or competent magistrate in the country claiming the fugitive."

"If, on examination, the magistrate finds that the acts are not disputed, but that a justification is established antecedent to, and independent of, the acts themselves, he must discharge the prisoner." *Id.*, 105.

In order to enable a justice of the peace to issue his warrant under the statute, 6 and 7 *Vict.*, c. 76, § 1, for the apprehension and committal for trial of an accused person, it need not appear that there was an original warrant for his apprehension in the United States, or depositions taken against him there; and the warrant of such justice of the peace need not

allege that the evidence before him was taken under oath. *In re Tivnan*, 5 *Best & Smith's Q. B. Rep.*, 645.

A French warrant for the apprehension of an accused person in Great Britain is necessary in order to procure his extradition under 6 and 7 *Vict.*, c. 76; but it need not be signed by a judge or competent magistrate, and need only be authenticated as made in such manner as would justify the arrest of the accused person in France.

A person condemned *par contumace* in France continues to be an accused person, liable to be delivered over under the Extradition Acts. *In re Coppin*, 2 *Law Rep.*, (*Chancery Appeals*), 47.

In the United States it is held, that the application for an order of arrest must conform to the requirements of the domestic law. *Matter of Farez*, 7 *Abbott's Practice Reports, New Series*, (*New York*), 84. Also, that the question of remanding the prisoner for further examination, and the time of remanding, and the determination of the magistrate as to whether the crime is proved, and the case is within the treaty, are matters of purely judicial determination, not subject to appeal, or to executive interference, or revision. *Matter of Metzger*, 5 *Howard's U. S. Sup. Ct. Rep.*, 176; 6 *Opinions of U. S. Attorneys-General*, p. 91; 10 *Id.*, 501.

The attorneys for the government in the United States are not charged with any duties in reference to the judicial inquiry instituted, before ordering an extradition. The minister or agent of the government making the requisition employs such counsel as he pleases, if any are necessary. 9 *Opinions of the U. S. Attorneys-General*, p. 246.

Documentary evidence.

220. Evidence of the commission of a crime by the accused may consist, either wholly or in part, of original depositions, properly authenticated, conformably to the laws of the country where they were made, so as to entitle them to be received for similar purposes by the tribunals or magistrates of such country; or, of exemplified copies, certified by the foreign court or magistrate, or proved, by oath, to be true copies of original depositions.

Such depositions or copies must be certified, as provided in Part VI. of this Code, entitled ADMINISTRATION OF JUSTICE, or by the minister of justice or chief executive officer of the demanding nation, or by the principal diplomatic or consular officer of the nation upon which the demand is made, resident in such foreign country: to be legally authenticated according to the laws of the demanding nation, in the manner

which would entitle them to be received in evidence, for similar purposes, by its tribunals or magistrates.

Act of Congress of August 12, 1848, § 2, 9 *U. S. Stat. at L.*, 302; Act of Congress of June 22, 1860, § 1, 12 *U. S. Stat. at L.*, 84; 10 *Opinions of U. S. Attorneys-General*, p. 501; Matter of Metzger, 5 *New York Legal Observer*, 83; *In re Coppin*, 2 *Law Rep.*, (*Chancery Appeals*), 47; Correspondence of British and French Governments, *Accounts and Papers*, 1866, vol. LXXVI., (38.)

The complaint upon which the warrant of arrest is asked should set forth clearly, but briefly, the substance of the offense charged, so that the court can see that one or more of the crimes enumerated in the treaty is alleged to have been committed. This complaint need not be drawn with the formal precision and nicety of an indictment for final trial, but should set forth the substance and material features of the offense. *In re Henrich*, 5 *Blatchford's U. S. Circuit Ct. Rep.*, 414; *Ex-parte Henrich*, 10 *Cox's Criminal Cases*, 626; 2 *Abbott's National Digest*, 509, note; Matter of Fa-rez, 7 *Abbott's Pr. Rep. N. S.*, 84.†

The affidavit which charges the crime is defective if the witness only swears to his belief. . . . Suspicion does not warrant a commitment, and all legal intendments are to avail the prisoner. The return is to be most strictly construed in favor of liberty. *Ib.*

The court can regard only the facts set forth in the affidavit as having any legal existence. Any misrecitals and overstatements in the *requisition* and warrant, which are not supported by the affidavit, cannot be received as evidence to deprive a citizen of his liberty, and transport him to a foreign State for trial. *Ex-parte Smith*, 3 *McLean's U. S. Circuit Court Rep.*, 121.

The affidavit upon which a warrant of arrest is to issue for the extradition of a fugitive, must state distinctly that the fugitive has committed a crime, and that he committed it in the State from which the requisition comes; for no foreign State can entertain such a jurisdiction of crimes committed in another State as to entitle it to make requisition for the criminal on a third State. *Ex-parte Smith*, 3 *McLean's U. S. Circuit Court Rep.*, 121.

Each piece of documentary evidence offered by the agents of the foreign government in support of the charge of criminality, should be accompanied by a certificate of the principal diplomatic or consular officer of the United States resident in the foreign country from which the fugitive shall have escaped, stating clearly that it is properly and legally authenticated, so as to entitle it to be received in evidence in support of the same criminal charge, by the tribunals of such foreign country. *In re Henrich*, 5 *Blatchford's U. S. Circuit Ct. Rep.*, 414; 2 *Abbott's Nat. Dig.*, 509, note; 10 *Cox's Criminal Cases*, 626.

The parties seeking the extradition of the fugitive should be required by the commission to furnish an accurate translation of every document offered in evidence which is in a foreign language, accompanied by an affi-

davit of the translator, made before him or some other United States commissioner or judge, that the same is correct. *Ib.*

Public officers should furnish authenticated copies of documents in their custody, when demanded, and should assist in bringing forward testimony, according to the duties of their several stations; and individuals should not refuse to give testimony. 1 *Opinions of U. S. Attorneys-General*, p. 82.

The commissioner before whom an alleged fugitive is brought for hearing, should keep a record of all the oral evidence taken before him, taken in narrative form, and not by question and answer, together with the objections made to the admissibility of any portion of it, or to any part of the documentary evidence, briefly stating the grounds of such objections, but should exclude from the record the arguments and disputes of counsel. *In re Henrich*, 5 *Blatchford's U. S. Circ. Ct. Rep.*, 414; 2 *Abbott's Nat. Dig.*, 509, note; 10 *Cox's Criminal Cases*, 626.

As to the necessary authentication of depositions under the English statutes to carry into effect the extradition treaties with France, see *Re Coppin*, 2 *Law Rep.*, (*Chancery App.*) 47; and the Correspondence between the French and English Governments on this point, in *Accounts and Papers*, 1866, vol. LXXVI., (38.) See reviews of this controversy, in a paper by Mr. Westlake, in *Transactions of National Association for Promotion of Social Science*, 1866, p. 144, and in a report by Mr. Picot, *Bulletin de la Société de Legis. Comp.*, Mai, 1869, p. 56.

Necessary proof of guilt.

221. The extradition of an alleged fugitive from justice, under this Section, can be made only when the fact of his commission of the offense is so far established that the laws of the country making the extradition would justify apprehension and commitment for trial, if the crime had been there committed.

This provision is contained in nearly all the American treaties. Mere suspicion is no ground for a requisition of a fugitive from a foreign nation. The law of nations requires that evidence, clear and positive, shall be furnished. 1 *Opinions of U. S. Attorneys General*, p. 509.

The proof should be in all cases not only competent, but full and satisfactory, that the offense has been committed by the fugitive in the foreign jurisdiction—sufficiently so to warrant a conviction, in the judgment of the magistrate, of the offense with which he is charged, if sitting upon the final trial and hearing of the case. No magistrate should order a surrender short of such proof. *Ex-parte Kaine*, 3 *Blatchford's U. S. Circ. Ct. Rep.*, 1.

A letter from the foreign minister resident here, asking for the preliminary process for extradition of an alleged fugitive criminal, accompanied by a warrant of arrest of the accused, purporting to be issued on due inquiry and evidence, by competent judicial authority in the foreign nation

and sufficiently authenticated by the minister's certificate, would not, if presented to an examining magistrate in the United States, be alone sufficient to authorize him to certify the criminality of the party charged, on which to found his actual extradition; for such evidence would not justify his commitment by the local law where the examination takes place. 6 *Opinions of U. S. Attorneys-General*, p. 217.

To authorize the arrest and removal of a fugitive from justice to the State having jurisdiction of the crime, it must distinctly appear, from the affidavits before the magistrate upon which the requisition was based, that the supposed criminal committed the crime in the State from which the requisition proceeds. *Ex-parte Smith*, 3 *McLean's U. S. Circ. Ct. Rep.*, 121.

Whether a *defense* may be interposed is a question which has been raised, but it seems better that the extradition should be made on the accusation, properly supported, leaving the case to be tried abroad. See, however, Letter of Mr. Lawrence, in *Trans. of Nat. Asso. for Prom. Social Science*, 1866, p. 156.

Evidence in case of convicted criminals.

222. In case sentence or judgment of guilt has been pronounced in the country making the requisition, surrender shall not be obligatory, except on presentation to the authorities of the nation on which the requisition is made, of the original sentence or judgment establishing the guilt of the accused, properly authenticated, or of an exemplified copy thereof, as prescribed in article 220.

This article is suggested by the provisions of the convention between the United States and

Italy,	Mar. 23, 1868, Art. V., 15 <i>U. S. Stat. at L.</i> , (Tr.), 131.
King of Sweden	} Mar. 21, 1860, " I., 12 <i>Id.</i> , 1126.
and Norway,	

Inquiry as to real motive of demand.

223. A nation upon which a demand for extradition is made, under this Section, may protect its right to give asylum, by looking behind the mere formal proofs presented in support of the demand, to see that it is not made for a purpose to which this Section does not apply; and, if satisfied that such is the case, may refuse the demand.

Dana's Wheaton, § 115, note 73, p. 184.

Clarke, (*Extradition*, p. 110,) lays down this rule.

No surrender should be granted except on the declaration of the min-

ister of the foreign power that the fugitive is wanted for trial for the offense charged in the depositions used against him, and no other.

Mr. Rathbone suggests that security should be given that the prisoner should have a public trial within a certain reasonable time, and that notice be sent to the representative abroad of the country surrendering the prisoner, that he may satisfy himself that these provisions of the treaty are carried out. *Transactions of Nat. Asso. for Prom. Social Science*, 1866, p. 144.

Conflicting claims.

224. In case two or more nations claim a person, upon a charge of violating a provision of this Code, the nation within which the offense was committed has the prior right, unless proceedings upon the charge have already been commenced by the other nation.

Surrender of those under arrest for local offenses may be deferred.

225. The surrender of a person claimed under this Section, who has been previously arrested for the commission of an offense against the laws of the country where he is found, or who has been there convicted of such an offense, may be deferred until he shall have been acquitted or punished therefor.

This provision is founded upon the convention between the United States and

Italy,	Mar. 23, 1868, Art. IV., 15 <i>U. S. Stat. at L.</i> , (Tr.) 130.
Prussia,	June 16, 1852, " IV., 10 <i>Id.</i> , (Tr.) 101.

(Extended to the)	} Feb. 22, 1868, " III., 15 <i>Id.</i> , (Tr.) 116.
North German Confederation,	

King of Sweden and Norway,	} Mar. 21, 1860, " VI., 12 <i>Id.</i> , 1126.
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Treaty between the United States and

Bavaria,	Sept. 12, 1853, Art. IV., 10 <i>U. S. Stat. at L.</i> , (Tr.) 176.
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Convention between France and

The Grand Duchy of Saxe Weimar,	} Aug. 7, 1858, Art. V., 7 <i>De Clercq</i> , 444.
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Surrender, notwithstanding civil arrest.

226. If the person claimed is under arrest in the country where he is found, on account of civil obligations, his surrender may be made notwithstanding, but upon condition that the right of the person concerned,

to pursue the remedy before the competent tribunals, is preserved.

Convention between France and

The Grand Duchy }
of Saxe Weimar, } Aug. 7, 1858, Art. V., 7 *De Clercq*, 444.

Conditional extradition.

227. A nation upon which a demand for extradition is made under this Section, may impose conditions in reference to the treatment of the person surrendered.

Bluntschli, (*Dr. Int. Cod.*), § 401.

Member of a third nation.

228. If the person whose surrender is demanded be a member of a third nation, which is a party to this Code, the surrender may be deferred until his nation has been informed of the proceeding, and invited to state objections, if any, to the extradition.

In such event, if a case for extradition be established, the nation on which the demand is made may deliver the person accused either to his own nation or to that making the demand.

Convention between France and

The Grand Duchy }
of Saxe Weimar, } Aug. 7, 1858, Art. VII., 7 *De Clercq*, 444.

As to the obligation of a nation to surrender its own members, see note 5 to Article 215.

Surrender, by whom made.

229. Except as provided in articles 230 and 231, the surrender shall be made only by authority of the proper executive officers of the nation upon whom the demand is made.

This provision is usual in the American treaties. By the British and American systems of extradition, the *judicial* inquiry and determination of the fact of culpability is interposed as a condition to the surrender, but the judicial magistrate is not vested with power to make the surrender. *Dana's Wheaton*, § 115, note 73.

The question whether the *casus fœderis* has arisen, or whether the compact will be executed, is a political question, to be decided by the President, and the courts have no power to direct or contravene his decision. Matter of Metzger, 5 *New York Legal Observer*, 83.

Surrender in case of offenses committed on the frontier.

230. In the case of persons found in a frontier State or Territory of one nation, upon the boundary between it and a contiguous nation, the surrender demanded by such contiguous nation, or its frontier State or Territory, may be made either as provided in the last article, or by the chief civil authority of the frontier State or Territory in which the person is found, or by such chief civil or judicial authority of the district or country bordering on that frontier, as may for this purpose be duly authorized by the civil authority of such frontier State or Territory; or when from any cause the civil authority of such State or Territory shall be suspended, by the chief military officer in command of such State or Territory.

See Article 212.

Treaty between the United States and

Mexico, Dec. 11, 1861, Art. II., 12 *U. S. Stat. at L.*, 1200.

Surrender by colonial government.

231. In the case of persons found within the territorial jurisdiction of a colonial government, the surrender may be made either as provided in article 229, or by the Governor or executive officer of the colony.

Such officer may either make the surrender demanded of him, or may refer the question to the government of the nation to which he belongs.

See Article 213, and note.

Things in prisoner's possession.

232. All articles in the possession of the prisoner at the time of his arrest, and taken with him, shall be delivered up on making the surrender, including not only articles stolen, but all those which can serve as evidence of guilt.

Convention between France and

The Grand Duchy }
of Saxe Weimar, } Aug. 7, 1858, Art. III., 7 *De Clercq*, 444.

Second arrest.

233. The discharge of a person arrested under the provisions of this Section, does not preclude a second arrest under a new complaint relating to the same offense,¹ except where he is entitled to a discharge by reason of the lapse of time.

¹ 6 *Opinions of U. S. Attorneys-General*, p. 91; 10 *Id.*, 501.

Custody of the prisoner.

234. Any person duly appointed, by the nation demanding the extradition, its agent to receive the surrender, is entitled to the same protection, in the execution of his duties, within the jurisdiction of the nation making the surrender, as is given by its laws to its own officers in the exercise of similar functions; and the obstruction of such agent, and the rescue or attempted rescue of the person from his custody, is punishable in the local tribunals, in the same manner as in the case of obstruction to, or rescue from, the local officers.

This article is suggested by the statute to provide for giving effect to the Act of Congress of the United States for the extradition of criminals, passed March 3, 1869, 15 *U. S. Stat. at L.*, 337.

Discharge in case of delay of extradition.

235. A person surrendered under this Section must be conveyed out of the country making the surrender, within two months after his commitment for extradition, and in default thereof, shall be discharged.

Act of Congress of the United States, August 12, 1848, 9 *U. S. Stat. at L.*, 303, § 4.

Limitations of time extended in certain cases.

236. The time necessary to allow of the intervention of the nation to which a colony belongs, according to article 213, or of that to which a foreigner whose extradition is demanded belongs, according to article 228, is not to be computed as a part of any of the times limited by the provisions of this Section for the arrest or extradition of an alleged fugitive from justice.

Restrictions as to punishment.

237. No person surrendered under the provisions of

this Section shall be prosecuted or punished, in the nation to which he is surrendered, for any offense committed previous to that for which his surrender was demanded,¹ nor for any offense which was not mentioned in the demand,² or which is of the classes mentioned in article 215, committed before the extradition.³

¹ This provision is suggested by the convention between the United States and Italy, March 23, 1868, 15 *U. S. Stat. at L.*, (Tr.) 130, where, however, it is restricted to "ordinary" crimes.

² If, during the proceedings, a new crime is discovered, not mentioned in the demand, a new demand must be made, founded thereon, in order to entitle the demanding nation to punish for the latter offense. *Fioré, Nouveau Droit International*, vol. 1, p. 329.

³ According to the conventions between France and several other nations, (cited in *Clarke on Extradition*, p. 178,) a person whose extradition has been accorded can in no case be prosecuted or punished for any political crime or offense committed before the extradition.

Necessary legislation to be provided.

238. Each nation which requires a judicial investigation before surrendering in extradition, must provide by law the necessary judicial power to carry into effect the provisions of this Section.

In England, the requisition must always be made through the executive government; and in treaties of this description made by that nation, the preliminary action of the Legislature is necessary.

At the time of the signature of the treaty of 1842, between the United States and Great Britain, the British Minister stated that the rendition treaty could have no effect in the British dominions in Europe till Parliament acted upon it. In Canada, it could have immediate effect. *Lawrence's Wheaton*, p. 241, note.

The constitutional doctrine in Great Britain is, according to *Forsyth*, (*Cases and Opinions in Constitutional Law*, p. 369, note,) that the Crown may make treaties with foreign States for the extradition of criminals; but those treaties can only be carried into effect by act of Parliament; for the Executive has no power, without statutory authority, to seize an alien here and deliver him to a foreign power. *Hansard's Parliamentary Debates*, vol. LX., pp. 317-327.

And the law is the same in the United States. *Kent's Commentaries*, p. 284.

SECTION II.

EXTRADITION OF DESERTERS.

The provisions of this Section are substantially the same as those common to nearly all the consular and commercial treaties. The treaties are so numerous, and the provisions in them so similar, that it seems unnecessary to refer to them in detail. See *United States Consular Regulations*, (1870,) ¶ 35, and Treaties in Appendix No. 1.

ARTICLE 239. Marine deserters only intended.

240. "Desertion" defined.

241. Local tribunals to order arrest of foreign deserters.

242. Application, how made.

243. Capture and imprisonment.

244. Deserters to be sent back.

245. Limit of imprisonment.

246. Delay of extradition for punishment of offense.

Marine deserters only intended.

239. This Section applies to the inmates, other than passengers, of ships, public or private, of any nation a party to this Code, but to no other persons.

Neither Great Britain nor the United States have ever recognized any obligation to surrender military deserters.

"Desertion" defined.

240. "Desertion" is the absenting¹ one's self from the ship and her service, without leave or legal justification,² and against the obligation of the party, with an intent not to return thereto.

¹ A casual overstay of leave is not desertion; but to refuse to return, after an absence on leave, is equally a desertion as to quit the ship. *United States Consular Regulations*, (1868,) p. 317, § 623.

² Leaving the vessel on account of cruelty, bad provisions, or other legal justification, is not desertion. *Magee v. The Moss*, *Gilpin's U. S. District Court Reports*, 219; *Hanson v. Rowell*, 1 *Sprague's (U. S.) Admiralty Decisions*, 117; *Hart v. The Otis*, *Crabbe's U. S. Dist. Ct. Rep.*, 52; *Freeman v. Baker*, *Blatchford & Howland's Cases in Adm.*, 372.

Local tribunals to order arrest of foreign deserters.

241. The police courts or magistrates of each nation shall, upon the application mentioned in the next article, order the arrest and surrender to his consul of any person charged with desertion, as therein provided, unless it appears that the person charged was at the time of shipping, and still is,¹ a member of the nation in which his extradition is claimed.

For the purpose of making provision for the *discharge and relief* of seamen, all seamen regularly shipped in the ships of any nation are to be regarded as such nation's seamen.

¹ Most of the treaties only allow the exception in favor of citizens, when the party was such at the time of shipping; but obviously the same character must continue at the time of the application, to entitle the party to the exemption.

Article IX. of the convention between the United States and France, Feb. 23, 1853, (10 *U. S. Stat. at L. (Tr.)* 114,) contains an exception of somewhat the same effect, as follows: unless "citizens of the country where the demand is made, either at the time of their shipping, or of *their arrival in the port.*"

Application for extradition, how made.

242. Application for the extradition of deserters must be made in writing by the consul¹ of the ship's nation, accompanied with proof, by the exhibition of the register of the ship, the roll of the crew, or by other official documents; or, if the ship be absent, by copies of such documents, duly certified, that the person charged belongs to the ship, and with proof, by oath, of his identity.²

¹ The application must be made by the consul, because in reference to the *discharge*, with his own consent, of a seaman or mariner, being a citizen of the consul's nation, the consul acts as the lawfully authorized guardian of the seaman of his nation, to hear and examine his complaints, and to afford him the only protection which the representative of his country can give him on foreign soil, viz: the termination of his connection with the ship. *United States Consular Regulations*, (1870,) ¶¶ 131, 133.

² The convention between the United States and Italy, Feb. 8, 1868, (15 *U. S. Stat. at L.*, 190, Art. XIII.) and some others, allow surrender without oath to identity, but it seems better to abrogate that exception.

Capture and imprisonment.

243. The local authorities shall give all necessary aid in searching for and arresting the deserters, and shall, at the request and expense of the consul,¹ imprison them until restored to their ships, sent home, or discharged.

By the provisions of this Code as to jurisdiction, the process of the local authorities may be executed on private and other unarmed foreign ships within the waters of a nation.

¹ Convention or treaty between the United States and

Belgium,	Dec. 5, 1868, Art. XII.,	<i>U. S. Cons. Reg.</i> , (1870,) ¶ 500.
France,	Feb. 23, 1853, “ IX.,	10 <i>U. S. Stat. at L.</i> , (Tr.), 114.
Italy,	Feb. 8, 1868, “ XIII.,	15 <i>Id.</i> , (Tr.), 185.
New Granada,	May 4, 1850, “ III.,	10 <i>Id.</i> , 900.

In many treaties of the United States, however, it is provided, that “deserters, when arrested, shall be at the disposal of their consuls,” and “may be confined in the public prisons, at the *request and expense of those who shall reclaim them*,”—meaning the agents, owners or masters of vessels on account of whom the deserters have been apprehended,—“until restored to their ships, or sent back to their own country.”

See treaty or convention between the United States and

Bolivia,	May 13, 1858, Art. XXXIV.,	12 <i>U. S. Stat. at L.</i> , 1003.
Denmark,	July 11, 1861, “ II.,	13 <i>Id.</i> , 605.
Dominican Republic,	Feb. 8, 1867, “ XXVI.,	15 <i>Id.</i> , (Tr.), 183.
Prussia,	May 1, 1828, “ XI.,	8 <i>Id.</i> , 382.
Russia, ¹	Dec. 6-18, 1832, “ IX.,	8 <i>Id.</i> , 448.
Sweden & Norway,	July 4, 1827, “ XIV.,	8 <i>Id.</i> , 346.

And other treaties. *United States Consular Regulations*, (1870,) ¶ 35, and Appendix No. 1.

It is noticeable that expenses of search and arrest are not provided for.

Deserters to be sent back.

244. The deserters may be restored by the consul to the ship to which they belong, if within his jurisdiction, or sent back to his country in ships of any nation whatsoever.

Limit of imprisonment.

245. Except as provided in the next article, the imprisonment of a deserter, under this Section, cannot continue more than two months,¹ reckoning from the day of the arrest; at the expiration of which time, and upon a notice of three days given to the consul, the

deserter shall be set at liberty, and cannot be again arrested for the same cause.

¹ The time stated in the treaties as the limit of imprisonment, varies from two to six months.

Treaty between the United States and Sweden and Norway, July 4, 1827, Art. XIV., 8 *U. S. Stat. at L.*, 346, . . . two months.

Convention between the United States and France, Feb. 23, 1853, Art. IX., 10 *Id.*, (*Tr.*) 114., . . . three months.

Consular convention between France and Austria, Dec. 11, 1866, Art. XII., 9 *De Clercq*, p. 669, . . . three months.

Treaty between the United States and Russia, Dec. 6-18, 1832, 8 *U. S. Stat. at L.*, 448, . . . four months.

Treaty between the United States and Hawaii, Dec. 20, 1849, Art. X., 9 *Id.*, (*Tr.*) 182, . . . six months.

Delay of extradition for punishment of offense.

246. If a deserter is charged with committing an offense cognizable by the local authorities, they may defer his surrender until he is acquitted, or punished therefor.

Consular convention between France and

Portugal, July 11, 1866, Art. XIII., 9 *De Clercq*, 582.

Austria, Dec. 11, 1866, " XII., 9 *Id.*, 669.

Brazil, Dec. 10, 1860, " IX., 8 *Id.*, 153.

Treaty between the United States and

Denmark, July 11, 1861, Art. II., 13 *U. S. Stat. at L.*, 605.

Dominican Republic, } Feb. 8, 1867, " XXVI., 15 *Id.*, (*Tr.*) 183.

Netherlands, Jan. 22, 1855, " X., 10 *Id.*, 1150.

Prussia, May 1, 1828, " XI., 8 *Id.*, 382.

Russia, Dec. 6-18, 1832, " IX., 8 *Id.*, 448.

Sweden and Norway, } July 4, 1827, " XIV., 8 *Id.*, 346.

And other treaties.

PART II.

THE RELATIONS OF A NATION TO THE PERSONS AND PROPERTY OF THE MEMBERS OF OTHER NATIONS.

TITLE VI. NATIONAL CHARACTER.

VII. DOMICIL.

VIII. NATIONAL JURISDICTION.

IX. DUTIES OF A NATION TO FOREIGNERS.

X. DUTIES OF FOREIGNERS TO THE NATION.

TITLE VI.

NATIONAL CHARACTER.

National character, as here treated, and as elsewhere mentioned in this Code, is that which is recognized during Peace. It may perhaps be regarded as coextensive with Allegiance, and to some extent to correspond with Jurisdiction. In questions arising out of War, national character, in the sense of belligerent or neutral, is said to be impressed on persons, according to domicile or other circumstances; but it has seemed better to use the words in this Code in their strict sense. The hostile or neutral character, which may be acquired or lost by acts aiding the enemy, without respect to any element of national character, will be the subject of provisions of the BOOK on WAR.

For a recent discussion of the subject of National Character of Persons, see the *Transactions of British Association for the Promotion of Social Science*, 1868, pp. 158, 179; *Revue de Droit International*, 1870, No. 1 p. 120.

The new English Law of Naturalization recognizes the principle of defeasible allegiance, &c., as expressed in Chapter XIX. See "The Naturalization Act, 1870," 33 *Vict.*, c. 14.

CHAPTER XIX. Of Persons.

XX. Of Shipping.

CHAPTER XIX.

NATIONAL CHARACTER OF PERSONS.

SECTION I. General provisions.

II. Allegiance.

III. Expatriation.

IV. Naturalization.

SECTION I.

GENERAL PROVISIONS.

ARTICLE 247. "National character" defined.

248. Every person has one national character.

249. Effect of marriage.

250. Legitimate child of a member of the nation.

251. Legitimate child of a foreigner.

252. Illegitimate children.

253. Effect of recognition.

254. Mode of recognition.

255. Illegitimate child born abroad.

256. Parents of unknown national character.

257. Presumption of membership.

258. Change of national character.

259. Political privileges unaffected by marriage.

260. Effect of marriage and removal.

"National character" defined.

247. The national character of a person is his connection with a nation, being one of its members, as explained in this Chapter.

Every person has one national character.

248. Every person has a national character.¹ No

person is a member of two nations at the same time;² but any nation may extend to a member of another nation, with his consent,³ the rights and duties of its own members, within its own jurisdiction,⁴ in addition to his own national character.

¹ This article changes the existing rule on the subject, in that it recognizes a national character in every person whomsoever, and declares distinctly that no person can have two national characters; but it permits each nation to extend any rights or privileges of its members to strangers, who are members of another nation, or to suspend the rights and privileges of its own members, as provided in this Code, or by its own constitution and laws.

The existing rule may be stated as follows:

A person who has ceased to be a member of a nation, without having acquired another national character, is nevertheless deemed to be a member of the nation to which he last belonged, except so far as his rights and duties within its territory, or in relation to such nation, are concerned.

Such persons are said to number many thousands in France. *Heffter*, (*Droit International*), § 38, subd. I., note 2.

By the French law they have a French status, if domiciled there, (1 *Boileux*, p. 58,) even if domiciled without authority; (*Id.*, p. 63;) but their national character is uncertain. *Heffter*, above. *Valette*, (*sur Prudhon*, t. 1, p. 200,) is of the opinion that if domiciled in France they are French. But this is denied by 1 *Boileux*, pp. 52, 62.

² "Double nationality, though tolerated in a large part of Europe, has been expressly proscribed by many Codes, as the person is required to choose, in such case, between his actual and his native domicile. *Zouch*, *De Jure Fec*, II., 2, 13, who denies the possibility of being the subject of more than one State, certainly goes too far; for it depends purely on the provisions of the laws of the States in question." *Heffter*, § 59, a.

"That any one should be a member of two nations at once, is inadmissible in principle." *Westlake's Private International Law*, p. 21, § 22.

If double allegiance or national character were allowed, resulting either from birth or from operation of law, a minor should be permitted to choose a single allegiance within a reasonable time after attaining to full age, according to the law of his domicile. See *Ludlam v. Ludlam*, 26 *New York Rep.*, 356. Such a declaration of alienage is now allowed by the

"Naturalization Act, 1870," 33 *Vict.*, c. 14, § 4.

³ The authorities are conflicting on this point:

"No State can impose the rights and duties of citizenship upon aliens who do not choose to take them." *Re Conway*, 17 *Wisconsin Rep.*, 529.

"The laws of the United States determine what persons shall be regarded as citizens, irrespective of such persons' pleasure." *Calais v.*

Marshfield, 30 *Maine Rep.*, 518. (See a qualification of this, in the same case, cited below.)

"The Court of Aix . . . holds, that Art. 4 of the Constitution of 1793 conferred the French character upon foreigners in certain cases fully and without any necessity on the part of the persons thus naturalized *ipso facto*, of manifesting their will or making any declaration of any sort, . . . and that the only question that could be raised was as to the force of a protest to the contrary, which the foreigner might have made for the purpose of preserving his nationality." *Felix, Droit International Privé*, 1, p. 96, note (a) by M. Demangeat.

"The statutes of Anne and Geo. II., . . . are peculiar in attaching the character of British subjects to the native-born citizens of other States, without the volition of the subject, and without requiring the condition of residence." *Ex-parte Dawson*, 3 *Bradford's (New York) Rep.*, 137.

Laws of this character frequently limit to the territory the privileges conferred. [*Décret*, Aug. 26, 1811, Tit. 1, Art. 3; (*Roger Collard Codes Franc., App.*, p. 46.)]

Similar laws have been passed in most of the United States; (see *Lynch v. Clarke*, 1 *Sandford's Ch. (New York) Rep.*, 663;) and in some of them alien inhabitants have the electoral franchise. (*Ib.*)

⁴ This limitation is also applied at present where expatriation is not permitted. "The original connection is preserved, but only in the interest of the nation of which the individual was a member at the outset, without excluding, as far as relates to his adopted country, the validity of his naturalization there." *Felix, Droit Intern. Privé*, I., p. 57, note 1; *Wilson v. Marryat*, 8 *Term Rep.*, 45.

Native-born subjects are protected as such within the territory of the nation of their birth, even though claimed by another nation as its subjects. *Ainslie v. Martin*, 9 *Massachusetts Rep.*, 454.

So, it was held by KENT and his associates, that the law of Spain, which authorized a domiciled American citizen to acquire the Spanish character by taking an oath before a Spanish consul in New York, without coming within Spanish territory, could not confer upon him a right accorded only to aliens; *i. e.*, the right to be sued in the Federal and not in the State courts. *Fish v. Stoughton*, 2 *Johnson's Cases, (New York)*, 407.

"If, by the laws of the country of their birth, children of American citizens born in such country are subjects of its government, the legislation of the United States will not be construed so as to interfere with the allegiance which they owe to the country of their birth while they continue within its territory. *United States Consular Regulations*, (1870,) p. 40, ¶ 115.

"Although the government of one country may grant to persons owing allegiance to that of another, the rights and privileges of citizenship, it is not intended to intimate that the government making such grant would thereby, and without their consent or change of domicile, become entitled to their allegiance in respect to any of their political duties or relations." *Calais v. Marshfield*, 30 *Maine Rep.*, 520.

In *Inglis v. Trustees of Sailors' Snug Harbor*, 3 *Peters' Rep.*, (U. S.) 157, STORY, J., says: The nation "may give him the privileges of a subject, but it does not follow that it can compulsorily oblige him to renounce his former allegiance."

In *Marryat v. Wilson*, 1 *Bosanquet & Puller's Rep.*, 443, the court says: "Is there any general principle in the law of nations, (out of which this adoption of subject seems to have grown,) that *in the parent State* the adopted subject is incapable of enjoying the privileges which have been conceded by the parent State to the subjects of that State which has adopted him? I know of no such disabling principle;" which is evidently not in conflict with the above limitation.

By the British "Naturalization Act, 1870," (33 *Vict.*, c. 14.) an alien may acquire all political and other rights, powers and privileges of a native-born subject, except within the limits of the State of which he was previously a subject.

Effect of marriage.

249. Except as provided in article 260, marriage does not change the national character of the wife.

Shanks v. Dupont, 3 *Peters' U. S. Rep.*, 242.

See Article 248; and 1 *Phillimore's International Law*, p. 350.

Legitimate child of a member of the nation.

250. A legitimate child, wherever born, is a member of the nation of which its father at the time of its birth was a member; or, if he was not then living, of the nation of which he was at the time of his death a member,¹ except as provided in the next article.

¹ This is the law in most European States, *Westlake*, p. 16, § 16; *Fœlix I.*, p. 54; but not in England or in the United States. However, in *Ludlam v. Ludlam*, 26 *New York Rep.*, 371, the Court says: "Citizenship of the father is that of the child, so far as the laws of the country of which the father is a citizen are concerned." And it has been held in the United States, that the national character of the parent is of no importance, even in the case of a child born within the territory to a parent who is not, and has not taken any step towards becoming naturalized there, and who removes the child while an infant. *Lynch v. Clarke*, 1 *Sandford's Ch. (New York) Rep.*, 585.

But this decision seems not to be entirely approved; *Munro v. Merchant*, 26 *Barbour's (New York) Rep.*, 400, 401; and probably would at the most be considered as authority only in regard to the right of succession to real property within that State.

Legitimate child of a foreigner.

251. A legitimate child, born within the jurisdiction¹

of a nation of which its father was not a member at the time of his death or of its birth, is a member of such nation, if its father was also born therein.²

¹ Shipping having the national character of a nation, is deemed a part of its territory, within the meaning of this Chapter. *Heffter*, § 78; *Vattel*, *Droit des Gens*, Bk. I., ch. 19, § 216. Thus, persons navigating an alien ship "are *ex prima facie* aliens." *Chalmers' Colonial Opinions*, p. 652, (Am. ed. of 1858.)

² Some such limitation is necessary in order to prevent the perpetuation of a race of aliens domiciled within the territory. The restriction here proposed is that adopted in France. *Felix*; *Dr. Intern. Privé*, I., p. 109, note; *Mourlon*, (4th ed.,) 99.

Illegitimate children.

252. Except as provided in article 255, an illegitimate child is a member of the nation of which its mother is a member at the time of its birth.

See *Westlake*, *Private Int. Law*, § 18, pp. 18, 19.

Effect of recognition.

253. An illegitimate child, recognized by its father, becomes a member of the nation of which he is then a member.¹ Such recognition has no retroactive effect.²

¹ *Felix*, I., p. 55.

The conflicting authorities are referred to by *Boileux*, I., pp. 50, 51; *Mourlon*, I., pp. 88, 89.

² See *Felix*, *Dr. Int. Privé*, I., p. 108.

Mode of recognition.

254. The recognition mentioned in the last article must be made in the manner provided by the law of the nation to which the father then belongs, and at a time when, by the law of that nation, the child is still a minor.

The authorities are to the effect that "the status of a person can never be modified except in conformity with his personal law;" (*i. e.*, that of his domicil.) Demangeat's note to *Felix*, *Dr. Int. Privé*, I., p. 98.

"It is the law of his birth-place which renders him capable of disposing of his person." *Felix*, I., p. 108, no. 41. "Majority belongs to personal status, and is, and can only be, governed by the law of the country to which the person belongs." *Mourlon*, I., p. 94.

The rule stated in the article, however, is in harmony with other proposed changes, referring to the law of the nation of which the father is, and child is to become a member, as the test.

Illegitimate child born abroad.

255. An illegitimate child, born within the jurisdiction of a nation of which its mother is not a member at the time of its birth, is a member of such nation, if its mother was also born therein.

See *Westlake, Private Int. Law*, § 18, pp. 18, 19.

Parents of unknown national character.

256. A child, the national character of neither of whose parents is known, is a member of the nation within whose jurisdiction it is born.¹ If its birth-place is also unknown, such child is a member of the nation within whose jurisdiction it is first found.²

¹ *Mourlon*, I., pp. 87-92.

² *Westlake*, p. 19; *Felix*, I., p. 55, note (1); See *Savigny*, 8, § 359, *ad fin.*

Presumption of membership.

257. A person actually within the jurisdiction of a nation, is presumed to be a member of such nation, until the contrary is shown.

"The law presumes that all persons who live among us are citizens of the United States, until the contrary appears by strict proof." *State v. Beackmo*, 6 *Blackford's (Indiana) Rep.*, 488.

So, where the only fact is that the defendant spoke slanderous words within the territory. *Lister v. Wright*, 2 *Hill's (New York) Rep.*, 320.

"I think it may be assumed as a principle, that the law of nations, without regarding the municipal regulations prescribed for his admission, views every man as a member of the society in which he is found. Residence is *prima facie* evidence of national character, susceptible, however, at all times, of explanation. If it be for a special purpose, and transient in its nature, it shall not destroy the original or prior national character. But if it be taken up *animo manendi*, with the intention of remaining, then it becomes a domicile, superadding to the original or prior character the rights and privileges as well as the disabilities and penalties of a citizen or subject of the country in which the residence is established." *Johnson v. Merchandise*, 2 *Paine's U. S. Circuit Ct. Rep.*, 624, 625.

"Another (rule) is, that a neutral or subject found residing in a foreign country is presumed to be there *animo manendi*; and if a state of war should bring his national character into question, it lies upon him to explain the circumstances of his residence." *The Venus*, 8 *Cranch's U. S. Sup. Ct. Rep.*, 279.

It has not seemed necessary to include in these provisions the case of corporations, which are sometimes said to have the national character of

the nation by virtue of whose laws it exists. It is a familiar rule that a corporation can have no legal existence beyond the territorial limits of the sovereignty which creates it.

It exists by force of the law; and where that ceases to operate and is no longer obligatory, the corporation can have no existence. It cannot migrate to another sovereignty, and can only have transactions from its home, through its agents. *The Baltimore and Ohio Railroad Co. v. Glenn*, 28 *Maryland Rep.*, 287. See *The Bank of Augusta v. Earle*, 13 *Peters' U. S. Supreme Ct. Rep.*, 519, Opinion of TANEY, Ch. J.

It is held, that a corporation chartered by two States, with the same capacities and powers, and intended to accomplish the same objects, exercising the same powers, and fulfilling the same duties in both States, is a distinct and separate body in each State. *County of Allegheny v. Cleveland & Pittsburgh R. R. Co.*, 51 *Pennsylvania Rep.*, 228.

Change of national character.

258. The national character of any person may be changed by expatriation and naturalization.

There are some other apparent cases of a loss of national character; such, for instance, as the French rule, that a Frenchman accepting, without authority from his government, public functions confided to him by a foreign nation, loses the quality of Frenchman; *Code Napoleon*, Art. 17; but these should rather be regarded as a denial of the rights or privileges of national character. In respect of the obligations or subjection of the individual, the national character should be deemed to continue until another is acquired.

Political privileges unaffected by marriage.

259. Marriage gives to the wife the privileges of the national character of her husband,¹ but does not deprive her of the privileges of that which she had before marriage,² except as prescribed by the next article.

¹ 1 *Phillimore's Intern. Law*, p. 350.

² This should seem to be the proper rule. Marriage "may change her civil rights, but it does not affect her political rights or privileges." STORY, J., in *Shanks v. Dupont*, 3 *Peters' U. S. Sup. Ct. Rep.*, 246.

The marriage of a woman in her own country with a foreigner domiciled therein, should certainly not denationalize her. The objection of double allegiance does not preclude her enjoying the privileges. As to the effect of marriage on nationality, see *Annual Register*, 1868.

By the British "Naturalization Act, 1870," (33 *Vict.*, c. 14, § 10,) a married woman is to be deemed a subject of the State of which her husband is for the time being a subject.

Effect of marriage and removal.

260. If, before or after her marriage, the domicile of

a woman is permanently removed from the territory of the nation to which she previously belonged, she acquires by such marriage and removal the national character of her husband.

This provision covers two classes of cases: 1. Where a woman emigrates while unmarried, and marries abroad, or in her own country, if only visiting there; 2. Where she marries at home, and afterwards emigrates. No difference is recognized between emigration to the husband's country and emigration to another. So long as she remains in her native land, there are evident reasons for allowing her to retain her original nationality. But if an Englishwoman marries a Frenchman, and they both emigrate to America, there is no reason for continuing to her the rights or duties of the English character.

SECTION II.

ALLEGIANCE.

ARTICLE 261. "Allegiance" defined.

262. Extinguishment of allegiance.

263. Renewal of allegiance.

"Allegiance" defined.

261. Allegiance is the obligation of fidelity and obedience which a person owes to the nation of which he is a member, or to its sovereign.

Extinguishment of allegiance.

262. Allegiance is extinguished:

1. By expatriation, and a formal act of renunciation;
2. By discharge therefrom by the nation or sovereign entitled thereto;
3. By change of national character, in the case mentioned in article 260.

At present no formal act is required except by municipal law. "The fact of renunciation is to be established like other facts for which there is no prescribed form of proof, by any evidence which will convince the judgment." 9 *Opinions of U. S. Attorneys-General*, (Aug. 17, 1857,) pp. 63, 64.

— It has been suggested that a legal sentence of banishment from the

jurisdiction of a nation, ought to dissolve the allegiance of the banished person thereto, for the period during which the sentence is actually carried into effect, because by banishment the sovereign withdraws his protection, and ought to give up the correlative allegiance.

But to the contrary, see 1 *Phillimore's Intern. Law*, 349.

Moreover, if the right of expatriation is recognized, as it is proposed by this Chapter, the exile can dissolve his allegiance by acquiring another nationality.

Renewal of allegiance.

263. Allegiance is revived by the voluntary return of the person to the territorial limits of his former country, and there acquiring a domicile, before naturalization elsewhere.

SECTION III.

EXPATRIATION.

ARTICLE 264. "Expatriation" defined.

265. Intent.

266. Expatriation a right.

267. Effect of expatriation.

"Expatriation" defined.

264. Expatriation is the act of abandoning the territory of the nation of which the person is a member, with intent to become naturalized elsewhere.

Intent.

265. The intent mentioned in the last article may be formed at the time of the abandonment or afterwards, and may be proved like any other similar fact.

Expatriation a right.

266. Subject to the laws defining civil incapacities depending upon age, mental condition, personal domestic relations, and public service, every member of a nation, however his national character may have been acquired, has the right of expatriation, which cannot be impaired or denied.

No person is punishable for the act of expatriation, "not even though at a later day he should have lost his adopted citizenship." Protocol Bavarian Treaty, May 26, 1868, II., 1, 15 *U. S. Statutes at Large*, (Tr.) 149.

The nation of which a person has become a member by naturalization, is bound to allow his subsequent naturalization elsewhere, and to retain him as one of its members until such subsequent naturalization. Protocol Bavarian Treaty, May 26, 1868, III., 2, 15 *U. S. Stat. at L.*, (Tr.) 149.

Effect of expatriation.

267. Expatriation does not change the national character of the person until completed by naturalization, but meantime he is entitled to be protected by the country whose naturalization he is seeking.

By the treaties of the United States with Prussia and Bavaria, 1868, (15 *U. S. Stat. at L.*, 115, 147,) an exception is made to this rule in the case of a naturalized citizen returning to the nation of his origin. Those treaties in effect provide that where an emigrant who has been naturalized abroad returns to his native country with intent to remain there, his naturalization in his adopted country cannot prevent him from regaining his former citizenship. If he renews his residence in his original country without the intent to return to the former, he shall be held to have renounced his naturalization; and that the intent of a naturalized citizen, who has renewed his residence in his original country, may be held to exist when the person naturalized in the one country resides more than two years in the other country.

SECTION IV.

NATURALIZATION.

ARTICLE 268. "Naturalization" defined.

269. Naturalization not obligatory.

270. Effect of naturalization.

271. Absentees cannot be naturalized.

272. Liability to justice on return.

"Naturalization" defined.

268. Naturalization is the act by which membership in one nation, however acquired, is renounced, and membership in another is assumed.¹

Neither the acceptance by a foreigner of the rights and duties of a member of the nation, under article

248, nor the declaration of intention to acquire a new national character,² constitutes naturalization, within the meaning of this Section.

¹ This form of expression is used so as clearly to include a re-adoption of the native or other prior national character, after naturalization elsewhere ; sometimes styled "repatriation" ; *e. g.*, by Lord STANLEY, *Annual Register*, (N. S.,) 1869, p. 133.

² Treaty between the United States and Baden, July 19, 1868, Art. I., *U. S. Cons. Reg.*, (1870,) ¶ 718.

Naturalization not obligatory.

269. Each nation is to judge for itself whom it will receive into naturalization.

Protocol Bavarian Treaty, III., 2, 15 *U. S. Stat. at L.*, (Tr.,) 149.

By Article III. of the convention between the United States and Great Britain, May 13, 1870, (*U. S. Cons. Reg.*, (1870,) ¶ 738,) the re-admission to the character of a citizen of the United States of one who desires to renounce a naturalization in Great Britain, is dependent "on such conditions as that government may think fit to impose."

Effect of naturalization.

270. A person naturalized according to the provisions of this Section, becomes immediately a member of the nation by which the naturalization is conferred, but he must, within a reasonable time thereafter, send a copy of the record of naturalization to a public minister or consul of the nation to which he previously belonged, resident in the territory of the nation which thus adopts him.¹ Till this is done, the nation or sovereign which he has left may reclaim him.

¹ This condition is new. It is inserted to prevent the practice of obtaining a naturalization, and subsequently attempting to enjoy the privileges of the previous national character. This fraud is stated to have greatly increased of late. *U. S. Consular Regulations*, (1870,) ¶ 110.

Absentees cannot be naturalized.

271. No person can be naturalized who is not at the time actually within the territorial limits of the nation by which he is naturalized.¹ But this article does not apply to a person whose last allegiance is extinguished pursuant to the second subdivision of article 262.

¹ "The Naturalization Act, 1870," (33 *Vict.*, c. 14,) § 6, makes the actual

presence of the party within the territory of the nation naturalizing him, an essential requisite.

See an analogous provision as to length of residence, in the Protocol Bavarian Treaty, May 26, 1868, L. 1, 15 *U. S. Statutes at Large (Tr.)* 149.

See, also, *Fish v. Stoughton*, 2 *Johnson's Cases*, New York, 407.

Liability to justice on return.

272. A naturalized person, who voluntarily returns within the territorial limits of the nation of which he was a member before his naturalization, remains liable to trial and punishment for an act punishable by its laws, and committed before his expatriation. But this article does not apply to a case where, by the laws of such nation, the liability is extinguished by limitation or otherwise.

Treaties between the United States and Bavaria and Prussia, *supra*.

CHAPTER XX.

NATIONAL CHARACTER OF SHIPPING.

In Commercial treaties, by which some of the privileges of domestic vessels are granted by each party to those of the other contracting power, it has been found important to prescribe a definite rule as to what shall constitute or prove national character. The importance of such a definite rule, agreed to by all nations, is enhanced by a consideration of the other questions which turn on the National Character of Shipping ; such as the jurisdiction, civil and criminal, over persons and transactions on shipboard ; see Articles 309, 210, 241 and 243 ; such also, as allegiance of persons born on shipboard : see Article 251 : such, also, as the authority of consuls in reference to wrecks ; see Chapter XXVII., entitled WRECKS.

As before explained, National Character is used in this Code, as in the commercial treaties, in its proper sense, with reference to Allegiance and Jurisdiction. The condition upon which *hostile* character depends, in the case of war, which is often called national character, without, however, necessarily implying anything more than a temporary identification with or service of the enemy, are proper subjects for the provisions of the Book on WAR.

Ortolan, (*Règles Int. et Dipl. de la Mer*, vol. i. p. 169, &c.) classifies the conditions of nationality, in the commercial laws of all countries, under

four points: 1. Construction or Origin; 2. Ownership; 3. Master; and 4. Crew.

The tests prescribed by the commercial treaties are various. They may be sufficiently indicated as follows:

By some treaties the national character of its ships is determined by each nation for itself, and will be accordingly recognized by the other nations. Of this class are the following:

Treaty between the United States and

The Two / Oct. 1, 1855, Art. IX., 11 *U. S. Stat. at L.*, 639.
Sicilies, \

Argentine /
Confed- July 27, 1853, " VI., 10 *Id.*, (*Tr.*) 237.
eration, \

Some earlier treaties limit the privileges accorded to national vessels, to those built within the nation's territories, or lawfully condemned as prizes, or adjudged forfeited for breach of municipal laws, and belonging wholly to citizens of the nation.

Several treaties prescribe that a vessel belonging exclusively to one or more citizens of one nation, and whose captain is also a citizen of the same, such having also complied with all the other requisites established by law to acquire a national character, though the construction and crew be foreign, shall be considered a vessel of such nation.

Of this class are the following treaties:

Treaty between the United States and •

Venezuela, Aug. 27, 1860, Art. VIII., 12 *U. S. Stat. at L.*, 1148.

Ecuador, June 13, 1839, " V., 8 *Id.*, 534.

Peru, July 26, 1851, " XI., 10 *Id.*, (*Tr.*) 28.

Bolivia, May 13, 1858, " V., 12 *Id.*, 1003.

Dominican Republic, Feb. 8, 1867, " VIII., 15 *Id.*, (*Tr.*) 167.

The treaty between France and Honduras, Feb. 22, 1856, Art. XIII., (7 *De Clereq.*, 10.) and others, substantially similar, provide that vessels shall be considered as having the national character, which were constructed in the nation, or, having been captured by its forces from an enemy, have been adjudged lawful prizes, or which have been condemned by its tribunals for violation of law; provided, however, that the owners, the master, and three-quarters [half] the crew, be of that nationality. Every such vessel, however, to be furnished with a passport, &c.

The English Shipping Act gives the *privileges* of national character only to ships wholly owned by its citizens. See *Abbott on Shipping*, 50; *Regina v. Arnaud*, 9 *Queen's Bench Rep.*, 817.

In determining the foreign or domestic character of a ship, for the purpose of ascertaining whether it is judicially subject to a maritime lien, the American courts inquire for the residence of the owners, and the enrollment is only *prima facie* evidence of their residence. *Hill v. The Golden Gate*, 6 *American Law Register*, 273, 302.

And charterers having, by the terms of the charter party, exclusive control, are deemed the owners within this rule. *Id.*

In framing the following rules it has been considered :

1. That every ship ought to be subject to some one jurisdiction, and that therefore the *responsibilities* of national character ought to be impressed upon every ship, without reference to its satisfying the conditions of registry laws.

2. That every nation may accord such advantages as it chooses, and therefore the immunities and privileges of national character ought to be extended only to such ships as do satisfy the conditions of the local law.

ARTICLE 273. Every ship has one national character.

274. Origin of national character.

275. Change of national character.

276. Registry.

277. Passport required.

278. Contents of passport.

279. Effect of ship's passport.

Every ship has one national character.

273. Every ship has a national character, and no ship has that of two nations at the same time. But any nation may allow to ships of other nations within its own territory any of the privileges of its domestic ships.

Origin of national character.

274. The national character of a ship is that of the nation within whose territory she was constructed, until changed as hereinafter provided.

Change of national character.

275. The national character of a ship, however acquired, may be changed :

1. By its ownership, or a majority in interest thereof, becoming vested in owners of a different national character ;

2. By being captured and adjudged lawful prize, as provided in Book Second of this Code, on WAR ;

3. By judicial forfeiture, pursuant to the laws of another nation, for a breach of the laws thereof, or of the provisions of this Code.

In any such case the national character acquired is that of a majority in interest of the new owners.

Registry.

276. Any nation may refuse the privileges of its own national character to any ship which has not a recorded title, according to its laws.

Passport required.

277. A nation may, in its discretion, give to any of its ships a passport, such as is mentioned in the next article.

Without such a passport, no private ship is entitled to receive from other nations, parties to this Code, or their members, the immunities and privileges of its national character.

Suggested by the treaty between the United States and The Two Sicilies, Oct. 1, 1855, Art. IX., 11 *U. S. Stat. at L.*, 639.

Contents of passport.

278. The passport of a ship must contain :

1. The name, vocation and residence of the owner, if but one, or of the several owners, if more than one, mentioning their number, and in what proportion they share in its ownership ;

2. The name, dimensions and burden of the ship, and such other particulars as may be necessary to identify it ; and,

3. A statement that the ship bears the national character of the nation issuing the passport, and is entitled to the immunities and privileges thereof.

The passport must be certified by the executive authority, competent, by the law of such nation, to give the passport.

“To entitle the national character of a vessel to recognition, it must be furnished with a passport, [*passe-port, congé ou enregistré,*] and which, certified by the executive authority competent by the law of such nation to give it, shall state: First. The name, the vocation and the residence of the owner, stating that there is but one, or of the several owners, indicating their number, and in what proportion they share in its ownership. Second. The name, the dimensions, the burden, and all other peculiarities of the vessel which can serve to identify its nationality.”

Treaty of friendship, commerce and navigation between France and Honduras, Feb. 22, 1856, Art. XIII., 7 *De Clercq*, 10.

Nicaragua, Apr. 11, 1859, " XIII., 7 *Id.*, 586.

To very similar effect are the following:

Treaty of navigation between France and

Sweden & Norway, Feb. 11, 1865, Art. III., 9 *De Clercq*, 172

Treaty of commerce and navigation between France and

The Free Cities of Lubeck, Bremen & Hamburg.	)	Mar. 4, 1865, Art. V., 9 <i>De Clercq</i> , 187.

The Grand Duchy of Mecklenburg Schwe- rin — (Extended to the) Grand Duchy of Mecklenburg Stre- litz.	)	June 9, 1865, " V., 9 <i>Id.</i> , 295.

Portugal, July 11, 1866, " XXI., 9 *Id.*, 558.

Treaty of commerce between France and

The Pontifical States, July 19, 1867, Art. X., 9 *De Clercq*, 739.

Treaty of friendship, commerce and navigation between France and

The Sandwich Islands, Oct. 29, 1857, Art. XIV., 7 *De Clercq*, 322.

This treaty also provides that in case of doubt as to the nationality of a vessel, or of the ownership, or of the master or crew, the consuls of the country for which the vessel is destined shall have the right to demand authentic proof before visaing the papers of the vessel. This is to be done without charge to the ship.

Effect of ship's passport.

279. The passport of a ship, issued in conformity to the last article, shall be everywhere taken as conclusive evidence of its national character at the date of the passport, and as presumptive evidence of such character at any subsequent time; subject, however, to the local regulations for verification; and also subject, in the administration of justice in civil and criminal cases, to the rules of evidence applicable in courts of justice.¹

¹ On an indictment under a law making criminal certain acts done on board a vessel owned in whole or in part by a citizen of the United States, an ownership in fact must be proved. General reputation or an American registry is not even *prima facie* evidence as to the ownership. *United States v. Brune*, 2 *Wallace Jr.'s U. S. Circuit Court Rep.*, 264.

It is not necessary to produce documentary evidence in order to prove the national character of a vessel, on an indictment for piracy. The laws that prescribe what ships' papers shall be carried on board, have relation to financial, commercial or international objects, and are not decisive in a

prosecution for piracy. The character of the vessel is then a matter *in pais*, and may be established by general evidence. *United States v. Furlong*, 5 *Wheaton's U. S. Supreme Court Rep.*, 184.

To show a vessel to be American, so as to give jurisdiction to punish offenses committed on board of her, it is enough to show, in the first instance, that she sailed from and to an American port, and was apparently owned and controlled by citizens of the United States. It is not necessary to produce her register. *United States v. Peterson*, 1 *Woodbury & Minot's U. S. Circuit Ct. Rep.*, 305.

But a ship engaged in a whaling voyage, without having surrendered her register or taken out an enrollment and license, pursuant to the act of July 18, 1793, was *held* not an American ship, within the purview of the act of March 3, 1835, ch. 40, punishing any of the crew of an American ship for an endeavor to make a revolt. *United States v. Rogers*, 3 *Sumner's U. S. Circuit Court Rep.*, 342.

Compare a somewhat different provision as to the effect of passports of persons, in Article 323.

TITLE VII.

DOMICIL.

CHAPTER XXI. Domicil, original and secondary.

XXII. Change of domicil.

XXIII. Effect of change of domicil.

CHAPTER XXI.

DOMICIL, ORIGINAL AND SECONDARY.

ARTICLE 280. "Domicil" defined.

281. Kinds of domicil.

282. Original and secondary.

283. Derivative and voluntary.

284. Every person has one domicil.

285. Original domicil of legitimates.

286. Original domicil of illegitimates.

287. Child of unknown parentage.

288. Continuance of domicil.

289. Wife's secondary domicil.

290. Child's secondary domicil.

291. Ward's secondary domicil.

292. Domicil of insane persons, &c.

"Domicil" defined.

280. The term "domicil," as used in this Code, means the seat¹ of permanent residence—the home.²

¹ *Ortolan*, (*Explication Historique de Inst. Justinien*, t. I., p. 402, 6 ed.) rejects the definition of domicil as "the place where a person has his principal establishment," for the reason that domicil is not a place at all, in the sense of being a portion of space. He substitutes the following: "The seat, or home, (*le siège, la demeure*,) which a person is deemed in law to have always for the exercise of certain rights or the application of certain laws." *Boileux*, I., p. 212; *Puchta*, *Vorlesungen*, I., S. 99, § 45, (5th ed.); ² *Kent's Commentaries*, 540, note, (8th ed.,) support the definition above given. See, also, *Westlake's Private International Law*, p. 31, note a, and

p. 35, Rule 2. *Demante*, I., p. 197; *Duranton*, I., no. 351; *Bug sur Pothier*, I., p. 3; *Valette sur Prudhon*, I., p. 236, cited *Mourlon*, I., p. 188. The definition of Lord WESTBURY, *Bell v. Kennedy*, *House of Lords*, 6 *Session Cases*, 3 series, p. 78: "The relation which the law creates between an individual and a particular locality," if not open to the objection of Ortolan, *ubi supra*, that it is too vague to be of use, is only a statement of domicile; *i. e.*, the *status* arising from it. Although it is true that "domicil is in law what residence is in fact," (*Ortolan*, p. 403,) yet "domicil is the legal conception of residence;" (*Westlake*, § 30;) and this legal conception is predetermined in particular cases, not in view of all the facts of these cases, but of some only, which are taken as controlling, because it is considered that they are, in the majority of instances, most likely to lead to a conclusion in harmony with the fact. But when such special facts are taken as controlling for any other reason than this likelihood, a purely arbitrary extension is given to the term domicile, which ought to be rejected, and the alternative taken of placing these cases in some other category. Thus the minor's domicile, after his parents' death, follows that of the guardian. This rule is founded upon its correspondence with the fact in the great majority of instances. Should it be considered as also established that the succession to such minor's property is not to be changed by the guardian's change of domicile, the rule itself should not be rejected, but this proposition should be inserted among the rules of law relating to succession. See *Westlake*, *Private Int. Law*, § 36.

² *Political Code, Reported for New York*, § 6.

Kinds of domicile.

281. Domicil is either :

1. Original ; or,
2. Secondary.

Original and secondary.

282. The original domicile is that of the person at the time of his birth. All others¹ are secondary.

¹ At any other time, whether at the place of the original domicile, or elsewhere.

Derivative and voluntary.

283. A secondary domicile is derivative, when dependent upon the domicile of another person. Otherwise, it is voluntary.

Every person has one domicile.

284. No person can be without a domicile,¹ or have at one time more than one domicile.² But one may have a residence, for a particular purpose, at a place other than his domicile.³

¹ *Political Code, Reported for New York*, § 7; *Boileux*, I., p. 214; *Westlake's Private Intern. Law*, pp. 33-38; *Story*, § 47.

² *Political Code, Reported for New York*, § 7; *Boileux*, I., pp. 214, 215; *Mourlon*, I., p. 198; *Westlake*, §§ 316, 325; *McLaren's Law of Wills and Succession*, § 7, p. 4; *Brent v. Armfield*, 4 *Cranch's U. S. Circuit Ct. Rep.*, 579; *Crawford v. Wilson*, 4 *Barbour's (New York) Rep.*, 504.

The case of a person whose birth-place is unknown, buying two country houses in different countries under the same circumstances, and dying in one of them, (suggested in 4 *Phill. Intern. Law*, § 59,) is provided for by Articles 287 and 288.

³ *Chaine v. Wilson*, 1 *Bosworth's (New York) Rep.*, 673; *Frost v. Brisbin*, 19 *Wendell's (New York) Rep.*, 11; *Douglas v. Mayor of New York*, 2 *Duer's (New York) Rep.*, 110; 4 *Phillimore's Intern. Law*, § 55.

Original domicile of legitimates.

285. The original domicile of a child which is legitimate, or has been acknowledged by its father before its birth, is determined by the domicile of its father at the time of its birth; or, if its father is then dead, or has no voluntary domicile, by the domicile of its mother.

See *Ludlam v. Ludlam*, 26 *New York Rep.*, 356, 371; *Westlake's Private Intern. Law*, § 35; *Brown v. Lynch*, 2 *Bradford's Surrogate (New York) Rep.*, 214.

Original domicile of illegitimates.

286. The original domicile of an illegitimate child is determined by the domicile of its mother at the time of its birth, unless previously acknowledged by its father.

Child of unknown parentage.

287. The original domicile of a child whose parents are unknown, is the place of its birth, or where it is first found.

Continuance of domicile.

288. The existing domicile¹ continues until another is gained,² or until the death of the person, whichever first occurs, except as provided in article 301.³

¹ This is true not only as to the original domicile, but also in reference to the derivative domicile; *e. g.*, of the wife; (*Pennsylvania v. Ravenel*, 21 *Howard's U. S. Sup. Ct. Rep.*, 103; *Westlake*, § 42;) or minor; *Doe v. Litherberry*, 4 *McLean's Rep.*, 454; *Goods of Patten*, 6 *Jurist, N. S.*, 151; *Boileux*, I., p. 121.

² A domicile cannot be lost until another is gained. *Somerville v. Somerville*, 5 *Vesey's Ch. Rep.*, 787; *Graham v. Public Adm'r*, 4 *Bradford's Surrogate (New York) Rep.*, 127.

³ The exception refers to the abandonment of a secondary domicile, with intent to acquire the original domicile.

Wife's secondary domicile.

289. The domicile of the husband is the domicile of his wife, except:

1. When she is living apart from him,¹ separated by the decree of a competent tribunal,² or by his consent, such separation being allowed³ by the domicile of each;⁴

2. When he has committed an offense which, by the law of her actual residence, entitles her to a divorce,⁵ which she claims;⁶

3. When she or some other person is the committee of his person;⁷

4. When some person other than her husband is the committee of her person.⁸

Bremer v. Freeman, 1 *Deane's Rep.*, 212; *Political Code, Reported for New York*, § 7.

¹ *Pothier, Contr. de Marriage*, § 524; 4 *Phillimore, Intern. Law*, §§ 71-73.

² *Vescher v. Vescher*, 12 *Barbour's (New York) Rep.*, 640; *Barber v. Barber*, 21 *Howard's U. S. Supreme Ct. Rep.*, 582; *Williams v. Dormer*, 2 *Rob.*, 505; 2 *Bishop on Marriage and Divorce*, (2d ed.), § 125; (1st ed.), § 728; *Pothier, ubi supra*, § 522; *Allison v. Catley, Session Cases*, 2nd series, I., 1025, 15th June, 1829; *McLaren's Law of Wills and Succession*, p. 15, § 29; *Boileux*, I., pp. 222, 223, note 1; *Westlake, Private Int. Law*, § 42; contra, *Merlin, Répertoire de Jurisprudence, Domicile*, § 5, no. 1; *Dalloz, Domicil*, no. 9; *Zacharie*, p. 280, § 140. Doubted, per Lord KINGSDOWN, in *Dolphin v. Robins*, 7 *House of Lords Cases*, 420; 3 *Macqueen's Rep.*, 581; *Re Daly's Settlement*, 22 *Jurist*, 525. It has even been held that a decree of separation cannot impose any particular domicile upon her. *Dijon*, 28 Ap., 1807; 6 *Dalloz*, t. 6, p. 379.

³ This is indispensable. *Mourlon*, I., p. 194, (4th ed.); *Bishop*, (2nd ed.), 1, § 634; 2, § 129; 1 *McLaren's Law of Wills and Succession*, p. 15, § 29; *Dolphin v. Robins*, 3 *Macqueen's Rep.*, 563-584.

⁴ *Westlake*, § 363. See *Connelly v. Connelly*, 7 *Moore's Privy Council Rep.*, 438, 471.

⁵ *Bishop, ubi supra*, 2, § 128, (2nd ed.); § 730, (1st ed.); *Westlake*, §§ 42, 364.

Whether the exception extends as far as to allow the wife to establish a domicile in a different judicial locality from that in which her husband's

domicil was situated at the time of the offense, has been denied. *Westlake*, § 365; 2 *Bishop*, (2nd ed.) § 128, (1st ed.) § 730.

Most of the State courts of the United States hold that it does. *Bishop*, 2, § 128; *Jenness v. Jenness*, 24 *Indiana Rep.*, 358, 359; *Reel v. Elder*, 62 *Pennsylvania Rep.*, 315; and the Supreme Court of the United States has followed their decisions in a late case, *Cheever v. Wilson*, 9 *Wallace's U. S. Sup. Ct. Rep.*, 108.

⁶ *Bishop*, 2, § 129, (2d ed.) This restriction is put on the ground that the offense cannot be inquired into collaterally. *Dolphin v. Robins*, 3 *Macqueen's Rep.*, 578, 579; 7 *House of Lords Cases*, 418; *Bishop*, *ubi supra*.

If the restriction is admitted, it should not be extended to a case where the wife has removed, acquired a new home, and commenced her proceedings for a divorce, and died before decree.

⁷ *Armstrong v. Armstrong*, 7 *Veazey's (Vermont) Rep.*, 350.

⁸ *Boileux*, I., p. 221; *Mourlon*, I., p. 195; *Demanté*, I., p. 206.

Child's secondary domicil.

290. The domicil¹ of the father, and after his death, that of the mother while she remains unmarried, is the secondary domicil of the unemancipated² minor child, if legitimate, or acknowledged by the father, except.

1. While another person than the parent is the guardian of the child;³

2. While the parent has a committee of his person;

3. While the child has a voluntary domicil in a different place, pursuant to the provisions of article 303.

¹ Mere residence—*e. g.*, imposed by banishment—is not such a domicil *Hardy v. De Leon*, 5 *Texas Rep.*, 237. Nor is the short forensic domicil, which is sufficient for purposes of divorce. See *Ringer v. Ringer*, 15 January, 1840, *Session Cases*, 2nd series, vol. 2, p. 307; *Brodie v. Brodie*, 30 *L. J.*, (*Prob. & Matr.*), 185.

The American cases, except in Louisiana, concur in holding that the mother loses all right to change her child's domicil on re-marriage, and that the step-father neither acquires it, nor imposes his domicil on the child, although the child actually resides with them. *Allen v. Thompson*, 11 *Humphreys' Rep.*, 538; *Mears v. Sinclair*, 1 *West Virginia Rep.*, 195. (Where the mother was also guardian.) *Brown v. Lynch*, 2 *Bradford's (New York) Rep.*, 218.

To the same effect. *McLaren's Law of Wills and Succession*, § 13; *Pothier, Cout. d'Orleans, Introd.*, 17.

The rule in Louisiana is different. Succession of Lewis, 10 *Louisiana Annual Rep.*, 790.

It seems not to have been decided whether the death of the step-father would revive the mother's right in this respect.

² *Code Napoleon*, Liv. I., Tit. III., Art. 108; *Boileux*, I., p. 221; *Mourlon*, I., p. 195; *Political Code, Reported for New York*, § 7.

³ *Mourlon*, I., p. 195.

⁴ This exception is necessary, if the provisions of the article referred to are adopted, as, if the term "minor child" is not restricted to children under the age of pupillarity, such child might have actually changed its domicil.

Ward's secondary domicil.

291. The domicil of the guardian, or if there are several jointly appointed, that of the one first named in the instrument of appointment, is the secondary domicil of his ward.

The case of an infant under two guardians having different domicils, does not seem to have yet arisen, in such a form as to require a decision. See *Robertson on Succession*, p. 201, note; *Pottinger v. Wightman*, 3 *Merivale's Rep.*, 67.

Domicil of insane persons, &c.

292. The domicil of a person of unsound mind, or of one duly declared incompetent, is determined by that of the committee of his person; or if there are several jointly appointed, of the one first named in the instrument of appointment.

Phillimore's Law of Domicil, p. 55; *Boileux*, I., p. 220; *Demanté*, I., p. 203; *Mourlon*, I., p. 195. See *Sharpe v. Crispin*, 38 *Law Journal, Probate*, 17; 1 *Law Rep., Prob. & Div.*, 611.

To the contrary, *Westlake, Private Intern. Law*, § 52.

CHAPTER XXII.

CHANGE OF DOMICIL.

ARTICLE 293. Right to change domicil.

- 294. Change of an adult's derivative domicil.
- 295. Guardian may change ward's domicil.
- 296. Parent's consent to change necessary.
- 297. Testamentary change of derivative domicil.
- 298. Change of domicil, how made.
- 299. Intention to change.
- 300. Presumption of no intention to change.
- 301. Reverting to original domicil.
- 302. Official or compulsory change of residence.
- 303. What law determines change of domicil.
- 304. Nationality not affected.

Right to change domicil.

293. Any person acting in good faith¹ may at his pleasure change his voluntary domicil to any place where he has a right to reside.

Watson v. Simpson, 13 *Louisiana Annual Rep.*, 337.

Change of an adult's derivative domicil.

294. The derivative domicil of an adult changes with a change of the voluntary domicil on which it depends.

Guardian may change ward's domicil.

295. The domicil of an unemancipated minor having no competent parent living, may be changed by its guardian,¹ with a change of his own domicil,² when acting in good faith and for its benefit.³

¹ 2 *Kent's Commentaries*, 227, note; *Wood v. Wood*, 5 *Paige's (New York) Rep.*, 605; *Holyoke v. Haskins*, 5 *Pickering's (Massachusetts) Rep.*, 20; *Succession of Lewis*, 10 *Louisiana Annual Rep.*, pp. 789, 790; *Carlisle v. Tuttle*, 30 *Alabama Rep.*, 613; *Townsend v. Kendall*, 4 *Minnesota Rep.*, 412. Doubted, *Ex-parte Bartlett*, 4 *Bradford's (New York) Rep.*, pp. 224, 225. Denied, *School Directors v. James*, 2 *Watts & Sergeant's Rep.*, 568; *Mears v. Sinclair*, 1 *West Virginia Rep.*, 185.

² 2 *Kent's Com.*, 227, note; *Lyon v. Andrews*, 12 *Louisiana Annual Rep.*, 685; *Felix, Droit Intern. Privé*, I., p. 57, note; *Mourlon*, I., p. 191, II.; *Duranton*, I., no. 367, p. 301.

³ *Pottinger v. Wightman*, 3 *Merivale's Rep.*, 67.

Parent's consent to change necessary.

296. The guardian cannot change the domicil of his ward while the latter has a competent parent living, except with the consent of such parent.

Political Code, Reported for New York, § 7.

Testamentary change of derivative domicil.

297. A person authorized so to do by the law of his domicil may change the domicil of any person dependent on him, after his death, to any place where the survivor has a right to reside.

In *White v. Howard*, 52 *Barbour's (New York) Rep.*, 294, it was held that a widower domiciled in Connecticut might change the domicil of his unemancipated minor child, upon his death, by appointing a testamentary guardian domiciled in New York.

Change of domicile, how made.

298. A change of domicile is produced by the act of residing in another country,¹ with the intention of making that country the home.² There must be a union of act and intent.

¹ If the intent exists, a residence in pursuance of that intention, however short, is sufficient. *Bell v. Kennedy*, *L. R.*, 1 *Scotch App.*, 319; *Westlake's Private International Law*, § 39; 4 *Phillimore's Int. Law*, p. 155, note; *Merlin, Répertoire de Jurisprudence*, vol. 8, p. 337, (5th ed.) It has been supposed that a domicile of succession might be acquired without any fixed place of residence in the new country, if the previous domicile has been unequivocally abandoned. *Westlake*, § 34; *Somerville v. Somerville*, 5 *Vesey, Jr.'s Rep.*, 791; *Bradley v. Lowrey*, 1 *Spears' Equity Rep.*, (U. S.) 16.

² *Chaine v. Wilson*, 1 *Bosworth's (New York) Rep.*, 673; *Munro v. Munro*, 7 *Clark & Finnelly's Rep.*, 877; *Craigie v. Lewin*, 4 *Curtis' U. S. Circ. Ct. Rep.*, 448; *De Bonneval v. Bonneval*, 1 *Id.*, 856; *Williams v. Saunders*, 5 *Coldwell's (Tennessee) Rep.*, 80.

Where a person has two places of residence, that which was first established may be regarded as his domicile, unless an intention appear to remain at the other as the principal and permanent residence. *Gilman v. Gilman*, 52 *Maine Rep.*, 165; *Guthrie's Savigny*, § 359.

Intention to change.

299. The intention to change the domicile may be manifested by making and signing a declaration thereof, both in the country of the present and of the intended domicile, before a notary public, or some other officer authorized to administer oaths; a copy of the declaration, certified by the officer, being published in the official journal of the country where made, within one month thereafter.

McLaren's Law of Wills and Succession, I., § 9, note, advocates the adoption of the similar provisions as to municipal domicile, in the *Code Napoleon*, Liv. I., Tit. III., §§ 104, 105. The provisions as to international domicile, in 24 and 25 *Vict.*, c. 121, requiring a year's foreign residence, and the filing of a declaration in some public office of the country of the new domicile, are said not to be effectual. (*Hayes & Jarman's Precedents of Wills*, (7th ed.,) p. 541; 2 *Williams' Executors*, (6th ed.,) p. 1409, note.) It is settled in the United States, that a formal declaration in a private instrument as to the place of domicile, is of great though not conclusive weight. [*Ennis v. Smith*, 14 *Howard's U. S. Sup. Ct. Rep.*, 422; *Roberts' Will*, 8 *Paige's (New York) Rep.*, 519; *Burnham v. Rangeley*, 1 *Woodbury & Minot's U. S. Circ. Ct. Rep.*, 9; *Lyman v. Fiske*, 17 *Pickering's (Massachusetts) Rep.*,

234; *Gorham v. Canton*, 5 *Greenleaf's (Maine) Rep.*, 266:] if made previous to the event which raises the question. *Kilburn v. Bennett*, 3 *Metcalf's Rep.*, 199; *Ennis v. Smith*, 14 *Howard's U. S. Sup. Ct. Rep.*, 422. Even with this restriction, (*Lockhart's Trust*, 11 *Irish Jurist, N. S.*, 245, 249.) the British courts do not seem to attach so much importance to such declarations.

The treaty between France and the Swiss Confederation, respecting the establishment of the members of the one nation within the other, June 30, 1864, 9 *De Clercq*, p. 91, Art. II., provides, that to obtain a domicile or establish a vocation (former un établissement) in Switzerland, Frenchmen must be furnished with a certificate of registration, stating their nationality, which shall be delivered to them by the French ambassador, after they shall have produced to him certificates of good character and conduct, &c.

In Louisiana, the following act has been passed in relation to political domicile:

"Any alien coming into this State from a foreign country, or from any State of the United States, or any citizen of the United States coming into this State as aforesaid, shall after having resided one year without any interruption in one of the parishes of this State, having in the meantime purchased or rented a house or room or parcel of land, or pursued some profession or employment for a support, be considered as having acquired a residence in the parish where such individual has so resided, and complied with the above requisitions, by making proof of the same before any judge or justice of the peace within this State," (which such official is authorized to receive, record and certify;) "and the oath of the individual applying, supported by the evidence of another, shall be deemed sufficient proof." *Louisiana Law* of March 16, 1818, § 1; *Bulard & Curry's Digest*, p. 286.

Absence on business of the State or of the United States does not, but a voluntary absence from the State for two years, or acquisition of residence out of the State, does forfeit the Louisiana residence. *Id.*, § 3.

A rule very similar to the one stated in the article above, was suggested by Mr. Westlake, and approved in discussion. See *Transactions of National Association for Promotion of Social Science*, 1868, p. 181.

Presumption of no intention to change.

300. If the written declaration mentioned in the last article is not made, an intention to change the domicile is presumed not to have existed until the contrary is proved.

The relative force of different facts as presumptive evidence of intention, is specially considered in *Westlake, Private Int. Law*, §§ 48, 49; *Taylor on Evidence*, § 167, (5th ed.)

A change of domicile to a country where the person is a foreigner, is not so easily inferred as a change to one of which he is a member. *Lord v.*

Colvin, 28 *Law Journal, Chancery*, 373; 4 *Drewry's Rep.*, 423; Whicker v. Hume, 7 *House of Lords Cases*, 159; Moorhouse v. Lord, 10 *Id.*, 286; Crookenden v. Fuller, 1 *Law Times, N. S.*, 73; Hegeman v. Fox, 31 *Barbour's (New York) Rep.*, 482.

Reverting to original domicil.

301. If a secondary¹ domicil is abandoned, with intent to re-acquire the original domicil,² and the person making the abandonment dies on the way to the original domicil, not only his domicil, but the derivative domicils dependent on his,³ are changed to his original domicil⁴ from the time of the abandonment.

¹ If the abandoned domicil is the original domicil, death in *itinere* does not change it. *Graham v. Public Administrator*, 4 *Bradford's (New York) Surrogate Rep.*, 127; *Bell v. Kennedy, Law Rep.*, 1 *Scotch Appeals*, 321.

² If the secondary domicil is abandoned without an intent to acquire any other determinate domicil, no change is produced. *Lyall v. Paton*, 25 *Law Journal, Chancery*, 746, 750.

It was held, in *Udny v. Udny, Law Rep.*, 1 *Scotch Appeals*, 441, that the original domicil revives the moment a secondary domicil is abandoned, and that it is of no importance whether the intention is to re-acquire the original domicil, or another secondary domicil, or whether there is no specific intention whatever except to abandon the existing secondary domicil.

The American cases certainly do not attribute any such adherent power to the original domicil. *Story*, § 47; *Hegeman v. Fox*, 31 *Barbour's (New York) Rep.*, 477, 478; 1 *American Leading Cases*, 747, (4th ed.) And they are supported by the authority of *Savigny*, (*Guthrie's Savigny*, § 359, p. 85.)

See, also, *Boileux*, I., p. 231; *Westlake*, § 40.

³ *Allen v. Thompson*, 11 *Humphrey's (Tennessee) Rep.*, 538.

⁴ It is stated to have been doubted whether the derivative domicil of a child, acquired by his parents' adopting a new domicil during his minority different from that of the child's birth, should be considered the child's original domicil, in such a case. *McLaren's Law of Wills and Succession*, I., p. 6, § 12.

Official or compulsory change of residence.

302. A change of residence, made in pursuance of official duty,¹ or made upon compulsion,² except in case of personal incapacity, provided for in this Chapter, does not change the domicil.

But any person having capacity to change his domicil, who, upon such change of residence, becomes subject to the jurisdiction of the country in which he re-

sides, may acquire a domicile by residing there, with the intention of making that country his home.

¹ *Westlake, Private Int. Law*, § 44, states the following rules in reference to official domicile:

“An office which requires residence, confers a domicile in that place in which the holder is bound to reside.” Under this rule, he instances an ecclesiastical cure, and a person in the East India service.

“But ambassadors and consuls retain the domicile of the country which they represent or serve.” It is well settled, however, that consuls may acquire a domicile for many purposes in the place of residence; and the rule stated in the above article, allowing all officers subject to the local jurisdiction to do so, is suggested as embodying the principle that ought to control, whatever be the class of officers.

It was held, in *Sharpe v. Crispin*, 38 *Law Journal*, (*Probate*), 17; 1 *Eng. Law Rep.*, (*Probate & Divorce*), 611, that the mere residence in a foreign country as a public officer, gives rise to no inference of a domicile in that country; but, (as was also held, in *Heath v. Samson*, 14 *Beavan's Rep.*, 441,) if one already there domiciled and resident, accept an office in the public service of another country, he does not thereby destroy his domicile. The acceptance of an irrevocable appointment for life, and a change of residence accordingly, sufficiently proves an intent to change the domicile. 4 *Phillimore's Int. Law*, §§ 104, 105.

² *Burton v. Fisher*, 1 *Milward*, 183; *Westlake*, § 53; *Boileux*, I., p. 220; *Duranton*, I., no. 373, p. 303; *Chauveau sur Carré Pr.*, 337; *Hardy v. De Leon*, 5 *Texas Rep.*, 237; *Re Duchesse d'Orleans*, 1 *Swabey & Tristram's Rep.*, 253, (Lunatic); *Hepburn v. Skirving*, 9 *Weekly Rep.*, 764; 4 *Phillimore*, p. 127, et seq.

An exception, where the prospect of return is excluded, (e. g., in the case of banishment for life,) is contended for by *Westlake*, § 53, and *Phillimore*, vol. 4, § 191.

Duranton, (*supra*), very properly restricts the exception to the municipal domicile of the party. So the *quasi* compulsion arising from ill health does not prevent the change. *Haskins v. Mathews*, 8 *De Gex, MacN. & G.*, 13; *Hegeman v. Fox*, 31 *Barbour's (New York) Rep.*, 483.

The domicile of a slave is that of his master while the slave continues such and remains within the territorial limits of a nation whose laws recognize the condition of slavery. *Phillimore's Law of Domicil*, ch. 7, § 4; *Merlin, Répertoire de Jurisprudence*, 6, p. 229; *Esclavage*, (5th ed.,) 11, p. 75; (7 *Opinions of U. S. Attorneys-General*, p. 278; [Cushing, A. G.;]) 2 *Hurd on Freedom and Bondage*, p. 774. But it is not necessary to make any provision for slavery.

What law determines change of domicile.

303. The laws then in force¹ of the nation within whose territory a person takes up his residence,² determine the age³ at which he may choose a domicile therein,

the mental capacity requisite therefor,⁴ and what constitutes freedom⁵ and good faith.

¹ Although no authority has been found for this application of the rule against the retroactive effect of laws, there seems to be no reason for making this case an exception to that rule.

² The existing rules would perhaps refer this question to the law of the country where the former domicile was, (see notes below;) but it is suggested by this article to permit each nation to determine, through its own laws, who have capacity to acquire a domicile within its territory. It has been held, that one who has abandoned his residence, and departed from the State with intent to seek a domicile elsewhere, is to be regarded as having lost his domicile in the former State, for the purposes of taxation. *Colton v. Inhabitants of Long Meadow*, 94 *Massachusetts Rep.*, 598.

But it is necessary, for purposes of succession and some others, to consider the character of one domicile as clinging to the person until a new one has been acquired; and an uniform application of this principle to all questions seems desirable.

³ *Felix*, Livre I., Titre 1, no. 33, tome 1, p. 81; no. 28, p. 57. In *Hiestand v. Kuns*, 8 *Blackford*, (*Ind.*) 345, a minor domiciled in Ohio, where the age of majority was eighteen, was held to have capacity to acquire a domicile of election at eighteen in Indiana, where the age of majority is twenty-one. It cannot be doubted, "that under those systems of law which recognize the distinction of pupilarity and majority, a minor beyond the age of pupilarity has the capacity of acquiring a domicile for himself." *McLaren's Law of Wills and Succession*, § 12, p. 6; *Arnott v. Groom*, *Session Cases*, 2nd series, vol. IX., p. 142, 24 Nov., 1846; *Erskine*, I., 7, 14; *Robertson, Personal Succession*, p. 201; *Stephens v. McFarland*, 8 *Irish Equity Rep.*, 444.

It has been denied, however, that the law of his new domicile would incapacitate him from the time of the change. *Savigny*, (*Guthrie's Translation*), p. 125; *Puchta Vorlesungen*, 2, § 113, s. 251, (5th ed.) That it would, was held in *Hiestand v. Kuns*, (*supra*), following *Story, Conflict of Laws*, §§ 67, 69. It certainly would not, if his subsequent removal was to his original domicile.

⁴ A person incapable in other respects may still have capacity to change his domicile. *Concord v. Rumney*, 45 *New Hampshire Rep.*, 428; *Holyoke v. Haskins*, 5 *Pickering's (Massachusetts) Rep.*, 26.

⁵ An interdicted minor cannot change his domicile. *Felix*, I., p. 57, no. 28, note 2. (His reference to Voet ad Pand., Lib. 5, Tit. 1, § 100, is not in point.)

It was held, in *Sharpe & Sharpe v. Crispin*, *Eng. Law Rep., Probate & Divorce*, vol. I., p. 611, "If a man at the time he attains his majority is of unsound mind, and remains in that state continuously up to the time of his death, the incapacity of minority never having been followed by adult capacity, will continue to confer upon the father the right of choice in the matter of domicile for his son, and a change of domicile by the father will usually produce a similar change of domicile as regards the lunatic son."

Nationality not affected.

304. A change of domicile does not necessarily effect a change of national character.

Natural allegiance fixes the *political status* of an individual, and the law of the domicile determines his *civil status*. By Lord WESTBURY. To suppose that for a change of domicile there must be a change of natural allegiance, is to confound the political and the civil *status*, and to destroy the distinction between *patria* and *domicilium*. *Udny v. Udny*, *Law Rep.*, 1 *House of Lords Sc. Cas.*, 441. *Haldane v. Eckford*, *Law Rep.*, 8 *Equity Cas.*, 631; *Whicker v. Hume*, 13 *Beavan's Rep.*, 401; *Stanley v. Bernes*, 3 *Haggard's Eccl. Rep.*, 373, 447, (reversing *Curling v. Thornton*, 2 *Adams' Rep.*, 6;) 25 *Beavan's Rep.*, 232; *Felix*, I., p. 58, note 7; 127, note; 133, note 2; *McLaren's Law of Wills and Succession*, p. 11, § 21; *White v. Brown*, 1 *Wallace, Jr.'s U. S. Circuit Ct. Rep.*, 265.

To the contrary, *Felix*, I., p. 58, note 29; *Marcy*, cited *Wheaton*, (6th ed.,) p. 132; *Heffler*, (3rd ed.,) p. 109; *Re Cassdeville*, 33 *Law Journ., Exch.*, 306; *Attorney-General v. Blucker*, 34 *Law Journ., Exch.*, 29.

CHAPTER XXIII.

EFFECT OF CHANGE OF DOMICIL.

ARTICLE 305. Change not retroactive.

306. Law of new domicile applies.

Change not retroactive.

305. A change of domicile has no retroactive effect.

Voet ad Pandect., Lib. 10, Tit. 2, § 29.

Either on the domicile of the person himself, or on the derivative domicils dependent on his. *Allen v. Thompson*, 11 *Humphrey's (Tennessee) Rep.*, 538, 539; *Bell v. Kennedy*, *Law Rep.*, 1 *Scotch Appeals*, 321.

Law of new domicile applies.

306. Upon a change of domicile, the law of the new domicile has thenceforth¹ the like effect upon the person acquiring it as the law of his preceding domicile had theretofore produced.

¹ *Felix*, *Droit Intern. Privé*, I., no. 28, p. 58, and note 2.

² *Story*, *Conflict of Laws*, § 69.

TITLE VIII.

NATIONAL JURISDICTION.

ARTICLE 307. "Jurisdiction" defined.

308. Territorial jurisdiction.

309. Extra-territorial jurisdiction.

310. "Law of place" defined.

311. Conflict of concurrent jurisdiction.

312. Subjects of jurisdiction.

313. Limits of exercise as to foreigners.

314. Foreign military and naval forces.

"Jurisdiction" defined.

307. The jurisdiction of a nation is its authority to govern, whether by legislative, executive or judicial power. It is either :

1. Territorial ; or,
2. Extra-territorial.

Territorial jurisdiction.

308. The territorial jurisdiction of a nation extends over all the places within its geographical limits, as defined by Chapter IV., on TERRITORY.

Extra-territorial jurisdiction.

309. The extra-territorial jurisdiction of a nation, exclusive or concurrent, extends over the following places :

1. All the land or water included within the lines of its fleets or armies,¹ exclusive in respect to its own members, and concurrent² with that of the nation owning the territory, in respect to members of that or of any other nation ;
2. All ships bearing its national character, exclusive³ except in the case of a private⁴ ship within the limits of another nation, and in that case, concurrent with such nation ;

3. All territory discovered or colonized by the nation, as provided in Title II., on EXTRA-TERRITORIAL ACTION, to the extent of its occupation thereof, as therein defined ; and,

4. All places occupied by its marine telegraphs, light-houses, buoys, and other structures or property, not within the territory of any other nation, for the purposes of protecting such property and structures, and redressing injuries thereto.

¹ 1 *Phillimore's International Law*, 215.

² This qualification is obviously necessary.

³ As to public ships, the jurisdiction is exclusive. 1 *Phillimore's Int. Law*, 367 ; The Santissima Trinidad, 7 *Wheaton's U. S. Supreme Ct. Rep.*, 283. The restriction to *ships of war*, made by the language of some authorities, it does not seem desirable to retain. Exceptions in the case of prize are reserved, to be treated in the Book on WAR.

⁴ In this article a ship is regarded as a place, although vessels at sea are no longer considered as part of the territory of a nation. The flag protects nothing but the vessel, and only designates to what portion of the globe she belongs. Jurisdiction over what is on board ship is therefore extra-territorial. *Johnson v. Twenty-one Bales, &c.*, 2 *Paine's U. S. Circuit Ct. Rep.*, 601 ; S. C., 6 *American Law Journal*, 68.

⁵ 1 *Phill. Int. Law.*, 373 ; The Exchange *v. McFaddon*, 7 *Cranch's U. S. Rep.*, 116. To the contrary, *Mahler v. Transportation Co.*

“*Law of place*” defined.

310. The expression, “law of place,” as used in this Code, signifies the law of the nation or State¹ within whose jurisdiction,² territorial or extra-territorial, for the time being, the transaction is had,³ or the subject exists.

¹ A question may arise here as to the proper rule to be applied on a question on which the local and the national or federal tribunals are at variance, as is the case upon some subjects of commercial law in the American courts.

² The definition is not limited to the exclusive jurisdiction, as there is a small class of cases in which the jurisdictions are concurrent, yet do not conflict. The case of conflict is provided for by the next article.

³ There is another qualification which, according to some authorities, should be added, viz : that which *was* the law at the time of the transaction. But we have thought that the effect of a change in the law is a municipal and not an international question ; and this article leaves the effect of a change of the law of place to be determined according to that law.

Conflict of concurrent jurisdiction.

311. In case of a conflict in the exercise of the concurrent jurisdiction, defined in article 309, the territorial jurisdiction is paramount to the extra-territorial, except where otherwise provided in this Code.

Persons attached to a foreign public ship do not by landing come under the territorial jurisdiction. *Wheaton's Elements of International Law*, v. 1, pt. 2, ch. 2; *Ortolan, Règles Int. et Dipl. de la Mer*, v. 1, 195.

Subjects of jurisdiction.

312. The jurisdiction of a nation extends to the following subjects:

1. To all persons and things in the places subject to its jurisdiction, territorial or extra-territorial, except as otherwise provided in this Code;
2. To its own property in other places, except as otherwise provided in this Code;
3. To all its own members and their property in any other places, in the cases provided in this Code, and in no other;
4. To the regulation of all transactions completed within its limits between living persons; and,
5. To the regulation of the devolution, at death, of all the movable property of all persons domiciled therein at the time of their death.

Limits of exercise as to foreigners.

313. The jurisdiction of a nation, so far as it affects foreigners or foreign nations, is to be exercised subject to the provisions of this Code.

Foreign military and naval forces.

314. In the case of military or naval forces of one nation occupying, or in transit through, the territory of another nation, by the consent of the latter, the jurisdiction of the former over the members of such forces is subject to the conditions of the consent.

TITLE IX.

DUTIES OF A NATION TO FOREIGNERS.

CHAPTER XXIV. Personal condition of foreigners.

XXV. Personal rights.

XXVI. Rights of property.

XXVII. Wrecks.

This title is restricted to those rights of foreigners which are secured by the Code only to members of nations uniting in it. The numerous rights and obligations which are applicable to all nations whatever, and all foreigners, of whatever nationality, are among the subjects treated under Division Second, concerning PRIVATE INTERNATIONAL LAW.

CHAPTER XXIV.

PERSONAL CONDITION OF FOREIGNERS.

ARTICLE 315. Who are foreigners.

316. Laws of a nation are applicable to foreigners.

317. Duty to administer justice.

Who are foreigners.

315. The national character of persons as foreigners or members of the nation, and the domicil of foreigners, are defined in Titles VI. and VII.

Laws of a nation are applicable to foreigners.

316. Except as is herein otherwise expressly provided, foreigners, while within the places subject to the jurisdiction of a nation, are, equally with the members of the nation, subject to its laws, and entitled to the protection thereof, for their persons and their property.

Ferguson on Marriage and Divorce, 57; *Reeding v. Smith*, 2 *Haggard's Consistory Rep.*, pp. 371, 384-386, per Lord STOWELL; 1 *Kent's Commen-*

taries, 36 ; *Woolsey's International Law*, 96 ; *Bluntschli, Droit International Codifié*, § 386.

The right of resort to the tribunals is defined by the Chapter concerning JUDICIAL POWER IN CIVIL CASES, in Part VI., entitled ADMINISTRATION OF JUSTICE.

Duty to administer justice.

317. It is the duty of a nation to administer justice, where foreigners or other nations are concerned, in the cases specified in Part VI., entitled ADMINISTRATION OF JUSTICE.

CHAPTER XXV.

PERSONAL RIGHTS OF FOREIGNERS.

SECTION I. Rights of residence.

II. Of occupation.

III. Of religion.

SECTION I.

RIGHTS OF RESIDENCE.

ARTICLE 318. Commercial intercourse.

319. Free entry of foreigners.

320. Traffic in laborers.

321. Exclusion.

322. Passports and safe conducts.

323. Effect of safe conduct.

324. Effect of passport.

325. Passports not to be required.

326. Armed expeditions.

327. Searches and seizures.

328. Unusual burdens not to be imposed.

329. Removal.

Commercial intercourse.

318. No nation has the right to interdict, absolutely, the entrance of foreigners into its territory, or to close the country to general commerce.

Bluntschli, Droit Intern. Codifié, § 381.

The original doctrine of international law does not sustain this position, but whatever doubts may have been raised on the point are now practically settled by many treaties of friendship and commerce which have established among Christian nations the rule stated in the article.

Free entry of foreigners.

319. Members of any nation, with their families and property, may freely enter, reside and become domiciled in any other nation, subject to the provisions of this Code, and of special compacts, and subject to the revenue, sanitary, police and other laws of the country, so far as the same are applicable to foreigners.

^r This is according to the rule stated by *Kent*, (1 *Commentaries*, 35), as the one which is now generally settled in commercial treaties. *Vattel*, (*Law of Nations*, Bk. 2, ch. 8, §§ 100, 101,) after speaking of the right of the lord of the territory to impose conditions, says: but in Europe the access is everywhere free to every person who is not an enemy of the State, except in some countries, to vagabonds and outcasts; upon the tacit condition, however, of obedience to the laws.

The exceptions of paupers, criminals, enemies, &c., are provided for in Chapter XVII., concerning ASYLUM, and in Book Second, on WAR.

Traffic in laborers.

320. Engaging, transporting, or employing laborers taken from any country whatever, and bound to service, whether for a fixed term or otherwise, excepting emigrants removing by their own free and intelligent consent, is a public offense; and all agreements for service entered into in reference to such traffic are void.

Suggested by the act of Congress of the United States, Feb. 19, 1862, (12 *U. S. Stat. at L.*, 340,) to prohibit the "*Coolie trade*," which provides, that no citizen of the United States, or foreigner coming into or residing within the same, shall, for himself, or for any other person whomsoever, either as master, factor, owner, or otherwise, build, equip, load, or otherwise prepare, or send to sea, or navigate any ship, for the purpose of procuring from China, or from any port or place therein, or from any other port or place, the inhabitants or subjects of China, known as "*Coolies*," to be transported to any foreign country, port or place whatever, to be disposed of, or sold, or transferred for any term of years, or for any time whatever, as servants or apprentices, or to be held to service or labor; or take on board of any ship, or receive, or transport any such persons, for the purpose of so disposing of them; or knowingly be engaged in anywise aiding or abetting therein. But nothing in the act is to be deemed

or construed to apply to, or affect any free and voluntary emigration of any Chinese subject.

Exclusion.

321. No nation can expel the members of another nation without special cause, which must be explained to the nation the members of which are expelled.¹

But this and the last article do not affect the right of a nation to punish crime by transportation or banishment.²

¹ This is the rule stated by *Heffter, Droit International*, § 33, cited in *Woolsey, Intern. Law*, p. 94, ¶ 6.

It is proposed as a more reasonable and liberal rule than that laid down by *Phillimore, Intern. Law*, vol. I., p. 407.

Phillimore says, that "it is a received maxim of international law that the government of a State may prohibit the entrance of strangers into the country, and may therefore regulate the conditions under which they shall be allowed to remain in it, or may require and compel their departure from it." *Id.*, p. 233.

Martens says, that the sovereign has a right to forbid foreigners to enter his dominions, without express permission first obtained, even if such entry be not prejudicial to the State; but no European power now refuses in time of peace, to grant permission; nor is it even necessary for such subject to ask permission. *Marten's Law of Nations*, Bk. 3, ch. 3, § 2.

These restrictive rules, however, are founded upon the old doctrine that one of the functions of government was to suppress the free movements of populations, and that the subjects of a State had no right to leave it without the assent of the government. See *Marten's Law of Nations*, Bk. 3, ch. 3, § 6.

Those rules are not in harmony with the objects of international law, as now established.

From *Vattel's* reasoning it should seem that a nation is authorized, and indeed bound to open its doors, and give protection to all strangers who come to it, except those who, by the *quality and frequency of their crimes, are entitled to a home nowhere*, but who, *being enemies of the whole human family*, are subject to punishment wherever they go. 1 *Opinions of U. S. Attorneys-General*, 514.

Subject to the restrictions rendered necessary by criminal justice; "the right of protecting all who may come within the bounds of an independent community, has been always held one of the most valuable prerogatives of sovereignty, and any invasion of it has ever been strenuously contested." *Ward's Law of Nations*, vol. 2, p. 319.

And the object of protection seems sufficiently attained by allowing the exclusion upon definite reasons assigned, as in the foregoing article.

² This qualification is suggested by the treaty of friendship, &c., between France and San Salvador, Jan. 2, 1858, 7 *DeClercq*, 362.

The treaty of friendship, commerce and navigation between France and Peru, March 9, 1861. Art. III., (8 *De Clercq*, 193,) provides, that the members of one nation cannot be arrested nor expelled from the other country, nor transported from one place to another within it, without sufficient reason, nor without the observance of the legal formalities and requirements: also, that the causes that render necessary such measures, and the documents which establish them, should be at a proper day communicated to the diplomatic or consular agents of their nation respectively; and in all cases, sufficient time should be accorded to persons concerned to present their defense, and to take, with the diplomatic or consular agents, the necessary measures for the protection of their property, and the property of others in their possession. These provisions, however, are not to hinder the execution of judgment according to the laws of the country.

To somewhat similar effect are the treaties of friendship, commerce and navigation between France and

Honduras, Feb. 22, 1856, Art. IV., 7 *De Clercq*, 10.

San Salvador, Jan. 2, 1858, " V., 7 *Id.*, 362.

Passports and safe-conducts.

322. A nation may, in its discretion, give passports to any of its members,¹ and safe-conducts to any persons whomsoever.

Safe-conducts may be issued by the executive government of the nation. Passports may be issued by the executive government at home, or by its authorized public agents abroad,² as provided in articles 123 and 173.

¹ *Dana* says, that perhaps a passport might be issued to a person in the employ of the government, though not a member of the nation; but it is suggested that that should not be allowed.

By the *United States Consular Regulations*, ¶ 102, persons who have merely declared their intention to become citizens are not citizens of the United States, within the meaning of the law giving to consuls power to issue passports; for such declaration has not the effect of naturalization.

² The issue in time of war is further provided for in Book Second, on WAR.

Effect of safe-conduct.

323. A safe-conduct must be everywhere respected as a protection to the person to whom it is issued, except from liability to punishment for crime committed after its issue.

Effect of passport.

324. A passport is a certificate that the holder is a member of the nation by which it is given.

It must, until revoked, be taken in every other nation as conclusive evidence of such membership, subject to the local regulations for verification; and also subject, in the administration of justice in civil cases, to the rules of evidence applicable in the tribunals.

See a somewhat different provision as to effect of passports of ships, in Article 279.

The United States have treaties with several Powers regulating the rights of naturalized citizens of the United States, on their return to their native lands. The protection which the *passport* gives is regulated in each such case by the terms of the treaty. Copies of these several treaties are given in Appendix No. 2, of *U. S. Consular Regulations*, 1870.

Certificates of citizenship have heretofore been issued by diplomatic and consular agents of the United States to persons residing in foreign lands, and claiming to be American citizens. But the issue of such certificates, except in the form of passports, is now expressly prohibited. *U. S. Cons. Reg.*, ¶ 109.

Passports not to be required.

325. No nation, unless engaged in war, shall require passports from members of the other nations.

This rule, already practically adopted by several nations, is proposed as a reasonable and convenient one for all the nations uniting in the Code. Some of the treaties, however, sanction the requirement of passports; for instance, that of the United States with the Swiss Confederation, Nov. 25, 1850, Art. IV., 11 *U. S. Stat. at L.*, 589.

During the Franco-Prussian war of 1870, France required passports duly certified by the French authorities, from all persons landing in France, without respect to age, sex, or nationality. Those not thus provided were liable to be turned back or detained.

Armed expeditions.

326. The liberty of entry into a nation extends only to individuals and peaceful companies. Armed foreigners are not entitled to admission into the territory of a nation, without express permission first obtained.

Marten's Law of Nations, Bk. 3, ch. 3, § 2; *Bluntschli, Droit Intern. Codifié*, § 383.

Searches and seizures.

327. The right of foreigners to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures. must not be violated, and domiciliary visits cannot be made in respect to them, without legal warrant.

This provision is from the treaty between Great Britain and

Colombia, Feb. 16, 1866, Art. XVIII., { *Accounts and Papers*, 1867,
vol. LXXIV., (36.)

Italy, Aug. 6, 1863, " XVII., { *Accounts and Papers*, 1864,
vol. LXVI., (35.)]

Constitution of the United States, 4th Amendment.

Treaty between the United States and

Hayti, Nov. 3, 1864, Art. VIII., 13 *U. S. Stat. at L.*, 711.

The latter provides, that "there shall be no examination or inspection of the books, papers, or accounts of the citizens of either country residing within the jurisdiction of the other, without the legal order of a competent tribunal or judge."

The treaty between the United States and Peru, July 26, 1851, Art. XIX., (10 *U. S. Stat. at L.*, 934,) provides, that citizens of one nation within the other shall not be liable to imprisonment without formal commitment under a warrant signed by a legal authority, except in cases *flagrantis delicti*, and shall in all cases be brought up for examination within twenty-four hours after arrest, and if not so examined shall be discharged.

Unusual burdens not to be imposed.

328. No other or more burdensome conditions can be imposed on foreigners, or on their enjoyment of the rights mentioned in this Code, than on the members of the nation where they reside.

But this provision does not extend to the exercise of political rights, nor to a participation in the property of communities, corporations, or institutions of which such foreigners shall not have become members or co-proprietors.

This provision is from the treaty between the United States and the Swiss Confederation, Nov. 25, 1850, Art. I., 11 *U. S. Stat. at L.*, 588. Many other treaties contain a provision to the same general effect. A clause securing equality of taxes and imposts is contained in most of the other treaties of the United States; but that subject is more specifically regulated by Chapter XXX., entitled TAXATION.

The uniformity of charges upon vessels is more specifically treated in the Title on IMPOSTS, in Part III., entitled UNIFORM REGULATIONS FOR MUTUAL CONVENIENCE.

The treaty between France and Switzerland, concerning the establishment of members of either nation within the other nation, June 30, 1864, (9 *De Clercq*, 91,) subsequently extended to the French colonies, (9 *Id.*, 372,) provides, that Frenchmen, without distinction of faith, shall be received and treated in each canton of Switzerland in the same manner as shall be those of Christian faith who come from the other cantons of Switzerland, and shall not be subjected to any other burdens than are such members of other cantons, and declares the rule for the Swiss in France to be reciprocal.

Removal.

329. Foreigners have the right at all times freely to quit the territory.

Bluntschli, Droit Intern. Codifié, § 392.

Removal in case of war is provided for in Book Second, on WAR.

SECTION II.

RIGHTS OF OCCUPATION.

ARTICLE 330. Commercial occupations.

331. Vocations generally.

Commercial occupations.

330. Members of any nation are at liberty, subject to the provisions of this Code, freely to come with their ships and other property to all resorts of commerce in the territory of the other nations; to acquire real and personal property for any lawful occupation; to manage their own affairs themselves or by such agencies as they please; and to carry on trade lawfully in the country.

This article is suggested by the following treaties, by which its substance is to a greater or less degree already adopted between the nations specified.

Treaty between Great Britain and

Salvador, Oct. 24, 1862, *Accounts & Papers*, 1863, vol. LXXV., (47.)

Nicaragua, Feb. 11, 1860, *Id.*, 1860, vol. LXVIII., (30.)

Mexico, Feb. 26, 1826, 3 *Hertell*, 251.

Colombia, Feb. 16, 1866, *Accounts & Papers*, 1867, vol. LXXIV., (36.)

Italy, Aug. 6, 1863, *Id.*, 1864, vol. LXVI., (35.)

Belgium, July 23, 1862, *Id.*, 1863, vol. LXXIII., (45.)

And see Treaty between Great Britain and

Prussia, August 16, 1865, *Accounts & Papers*, 1866, vol. LXXVI., (38.)

Treaty between the United States and

Dominican Republic, Feb. 8, 1867, Art. III., VI., 15 *U.S. Stat. at L.*, 60.

Guatemala, March 3, 1849, "III., IV., XI., 10 *Id.*, 874.

San Salvador, Jan. 2, 1850, " III., IV., 10 *Id.*, 891.

Argentine Confed- } July 27, 1853, " II., VIII., 10 *Id.*, 1006, 1008.
eration,

Nicaragua, June 21, 1867, Art. II., 15 *Id.*, 169, 171.

Honduras, July 4, 1864, " II., 13 *Id.*, 700.

Hayti, Nov. 3, 1864, " VI., 13 *Id.*, 713.

Bolivia, May 13, 1858, " III., 12 *Id.*, 1005.

Venezuela, Aug. 27, 1860, 12 *Id.*, 1144-1147.

Swiss Confederation, Nov. 25, 1850, " I., 11 *Id.*, 588.

Two Sicilies, Oct. 1, 1855, 11 *Id.*, 643-647.

Persia, Dec. 13, 1856, 11 *Id.*, 709, 710.

Costa Rica, July 10, 1851, " II., 10 *Id.*, 917.

Peru, July 26, 1851, 10 *Id.*, 926-930.

Hanover, June 10, 1846, 9 *Id.*, 864.

New Granada, Dec. 12, 1846, " III., 9 *Id.*, 882.

Mecklenburg- } Dec. 9, 1847, " X., 9 *Id.*, 918.
Schwerin,

Hawaiian Islands, Dec. 20, 1849, Art. VIII., IX., 9 *Id.*, 979.

Treaty between France and

Austria, Dec. 11, 1866, 9 *De Clercq*, 646.

Netherlands, July 7, 1865, 9 *Id.*, 337.

Nicaragua, April 11, 1859, 7 *Id.*, 586.

Russia, June 14, 1857, 7 *Id.*, 278.

San Salvador, Jan. 2, 1858, 7 *Id.*, 362.

Honduras, Feb. 22, 1856, 7 *Id.*, 10.

And see 5 *De Clercq*, 602.

Citizens and foreigners are also placed on an equality in respect to property and business, by the following ;

Treaty of commerce and navigation between France and

The Free Cities of Lu- }
bec, Bremen, and } March 4, 1865, Art. I., 9 *De Clercq*, 187.
Hamburg,

The Grand Duchy of }
Mecklenburg-Schwe- }
rin, (Extended to } June 9, 1865, Art. I., 9 *Id.*, 295.
the) Grand Duchy of }
Mecklenburg · Stre- }
litz,

Treaty of commerce between France and

Austria, 11 December, 1866, 9 *De Clercq*, 646.

These references might be extended by enumerating earlier treaties, but enough are given to show the virtual abandonment of the old prin-

ciple of the disabilities of aliens. Many of the treaties simply authorize hiring.

Vocations generally.

331. Members of any nation have the same rights of following any vocation in any of the others, as the members of the latter. But this provision does not extend to officers and official trusts ; and is subject, also, to the right of the State to determine by law what persons may engage in particular occupations within it.

The treaties referred to under Article 329 do not generally extend the stipulations for rights of occupation to other vocations than those of commerce. The Treaty between the United States and the Swiss Confederation, however, extends it to all professions. See, also, Treaty between France and Peru, March 9, 1861, Art. II., 8 *De Clercq*, 193.

By the Treaty between the United States and The Two Sicilies, Oct. 1, 1855, (11 *U. S. Stat. at L.*, 639, Art. VI.,) it is provided that the reciprocity established shall not extend to premiums which either nation may grant to their own citizens or subjects to encourage the building of ships to sail under their own flag.

For a presentation of the existing rules in England, France, and several other countries, as to the disabilities of aliens, and a history of the relaxation of these restrictions, see *Alexander Cockburn on Nationality*, ch. 5.

SECTION III.

RIGHTS OF RELIGION.

ARTICLE 332. Freedom of conscience.

333. Sepulture.

Freedom of conscience.

332. Foreigners cannot be molested, prejudiced, or questioned, for their religious belief, or practice in worship, or be compelled to conform to the religious worship of others ; but they must not show disrespect towards the religion, laws, and established customs of the nation in which they may be, and must

not indulge in practices inconsistent with the good order and safety of the State.

This is the American doctrine, and is submitted as the true rule upon this subject, and the one towards which all nations are steadily tending. It is already embodied substantially in the treaty provisions of many nations of various religious character.

Treaty between the United States and

San Salvador,	Jan. 2, 1850, Art.	XIV., 10	<i>U.S.Stat.at L.</i> , 893.
Guatemala,	Mar. 3, 1849, "	XIII., 10	<i>Id.</i> , 878.
Paraguay,	Feb. 4, 1859, "	XIV., 12	<i>Id.</i> , 1098.
Nicaragua,	June 21, 1867, "	XII., 15	<i>Id.</i> , 67.
Hayti,	Nov. 3, 1864, "	VIII., 13	<i>Id.</i> , 714.
Venezuela,	Aug. 27, 1860, "	IV., 12	<i>Id.</i> , 1145.
Honduras,	July 4, 1864, "	XII., 13	<i>Id.</i> , 706.
Bolivia,	May 13, 1858, "	XIV., 12	<i>Id.</i> , 1011.
Japan,	July 29, 1858, "	VIII., 12	<i>Id.</i> , 1058.
Costa Rica,	July 10, 1851, "	XII., 10	<i>Id.</i> , 923.
Peru,	July 26, 1851, "	XX., 10	<i>Id.</i> , 935.
Argentine Con- federation,	} July 27, 1853, "	XIII., 10	<i>Id.</i> , 1011.
New Granada,			
	Dec. 12, 1846, "	XIV., 9	<i>Id.</i> , 887.
Hawaiian Islands,	Dec. 20, 1849, "	XI., 9	<i>Id.</i> , 981.

The treaty with Paraguay restricts the right of worship, by protecting aliens in the proper exercise of their religion in private, in their own dwellings, or in the dwellings or offices of consuls or vice-consuls of the United States.

The treaty with the Argentine Confederation, July 27, 1853, (10 *U. S. Stat. at L.*, 1011, Art. XIII.,) adds: or in their own churches or chapels, which they shall be at liberty to build and maintain, in convenient situations, to be approved by the local government.

The extent of the rule established by the comity of nations, as it was stated by *Twiss*, (1 *Intern. Law*, 309, § 204,) is this:

"A foreign public minister is entitled to the free exercise of his religion, within his house, for himself and his countrymen, subject to the right of the sovereign of the country to forbid acts which make it an object of public notice."

But doubtless the existing rule is more liberal, and might be justly stated thus:

"Foreigners are at liberty to adopt any religion, and to practice the rites and observe the ceremonies thereof, except so far as such religion, or its rites or ceremonies are prohibited by the positive law of the nation in which they are."}

This rule is recognized by the following treaties:

Treaty between Great Britain and

Colombia,	Feb. 16, 1866, Art.	XV.,	{ <i>Accounts and Papers</i> , 1867, vol. LXXIV., (36.)
Madagascar,	June 27, 1865, “	III.,	{ <i>Accounts and Papers</i> , 1867, vol. LXXIV., (36.)
San Salvador,	Oct. 24, 1862, “	XVIII.,	{ <i>Accounts and Papers</i> , 1863, vol. LXXV., (47.)
Nicaragua,	Feb. 11, 1860,		{ <i>Accounts and Papers</i> , 1860, vol. LXVIII., (30.)

See the French treaties, cited under the next article.

Sepulture.

333. Foreigners may be buried in the country in which they die, either in the ordinary cemeteries, or in burial places of their own ; and such burial places foreigners are at liberty, without distinction on account of religion, race or nationality, to establish and maintain, in situations approved by the local government.

* Funerals, sepulchres of the dead, and ceremonies of exhumation,¹ shall not be molested or disturbed.

This provision is in substance from the treaties between the United States and

Nicaragua,	June 21, 1867, Art.	XII., 15	<i>U. S. Stat. at L., (Tr.),</i> 67.
Honduras,	July 4, 1864, “	XII., 13	<i>Id.</i> , 706.
Hayti,	Nov. 3, 1864, “	VIII., 13	<i>Id.</i> , 714.
Bolivia,	May 13, 1858, “	XIV., 12	<i>Id.</i> , 1011.
Venezuela,	Aug. 27, 1860, “	IV., 12	<i>Id.</i> , 1145.
Paraguay,	Feb. 4, 1859, “	XIV., 12	<i>Id.</i> , 1098.
Guatemala,	Mar. 3, 1849, “	XIII., 10	<i>Id.</i> , 878.
San Salvador,	Jan. 2, 1850, “	XIV., 10	<i>Id.</i> , 893.
Costarica,	July 10, 1851, “	XII., 10	<i>Id.</i> , 923.
Peru,	July 26, 1851, “	XX., 10	<i>Id.</i> , 935.
Argentine Con- federation,	{ July 27, 1853, “	XIII., 10	<i>Id.</i> , 1011.
New Granada,	Dec. 12, 1846, “	XIV., 9	<i>Id.</i> , 887.

And the treaties between Great Britain and Colombia, Salvador and Nicaragua, referred to at the end of note to the preceding article.

Some of the treaties of France contain similar provisions. See that with

Peru,	March 9, 1861, 8	<i>De Clercq</i> , 193.
Nicaragua,	April 9, 1859, 7	<i>Id.</i> , 586.

¹ Treaty between France and

New Granada, May 15, 1856, Art. VII., 7 *De Clercq*, 102.

CHAPTER XXVI.

RIGHTS OF PROPERTY.

- ARTICLE 334. Foreigners enabled to enjoy property.
335. Foreigners enabled to transmit property.
336. Right to remove property.
337. Absence of heirs.
338. Death of persons who are foreigners, or not domiciled.
339. Consul may send home assets of seamen, &c.
340. Consul entitled to administer.
341. Security not required.
342. Local authorities to administer in absence of consul and all other authorized persons.
343. Notice to be given of successions in which foreigners are interested.
344. Secretary of legation to act, if there be no consul.

Foreigners enabled to enjoy property.

334. Subject to the right of eminent domain, defined by article 50, a foreigner, equally with a member of the nation, may take, hold, transfer, and otherwise dispose of property, movable or immovable.

This and the next article are from the *Civil Code, Reported for New York*.

The convention between France and Austria, for the regulation of successions, December 11, 1866, (9 *De Clercq*, p. 675,) provides, that the members of either nation may give and receive by will, legacy, gift or otherwise, or by succession from intestates, property situated in the other country, in the same manner as the members of the nation, and shall not be charged with heavier rates of succession or transfer than those which are imposed, under like circumstances, upon the members of the nation, and that they may have their wills drawn up by the consuls of their nation.

The same rule as to succession is, in substance, embodied in many treaties, though in some as to personalty only.

See the treaty between France and

- Peru, Mar. 9, 1861, 8 *De Clercq*, 193.
 Nicaragua, Apr. 11, 1859, Art. VI., 7 *Id.*, 586.
 San Salvador, Jan. 2, 1858, " VIII., 7 *Id.*, 362.
 New Granada, May 1856, " VIII., 7 *Id.*, 102.
 Sandwich Islands, Oct. 29, 1857, " VI., 7 *Id.*, 322.

Treaty between the United States and

- Sweden, April 3, 1783, Art. VI., 8 *U. S. Stat. at L.*, 64.
 San Salvador, Jan. 2, 1850, " XII., 10 *Id.*, 893.
 Argentine Con- } July 27, 1853, " IX., 10 *Id.*, 1009.
 federation, }
 New Granada, Dec. 12, 1846, " XII., 9 *Id.*, 886.

The treaty between the United States and The Two Sicilies, Oct. 1, 1855, Art. VII., (11 *U. S. Stat. at L.*, 639,) provides, that as to any member of either nation dying within the jurisdiction of the other, his heirs, being citizens or subjects of the other, shall succeed as to the personalty, and either to the real estate, or to the proceeds thereof, whether by testament, or *ab intestato*.

And other American treaties, recognizing the disability as to real property, seem to secure the right to sell and take the proceeds.

Many other treaties, which do not authorize aliens to inherit *real property*, provide that where the alien is, by the local law, incapable of succeeding to an inheritance, he may have a reasonable time to sell the estate.

Treaty between the United States and

- Hanover, June 10, 1846, Art. X., 9 *U. S. Stat. at L.*, 864.
 Portugal, Aug. 26, 1840, " XII., 8 *Id.*, 560.
 Russia, Dec., 1832, " X., 8 *Id.*, 444.

Others give the longest time therefor allowed by the local law.

Treaty between the United States and

- Nicaragua, June 21, 1867, Art. VIII., 15 *U. S. Stat. at L.*, (Tr.), 59.
 Dominican Re- } Feb. 8, 1867, " V., 15 *Id.*, (Tr.), 167.
 public, }
 Bolivia, May 13, 1858, " XII., 12 *Id.*, 1010.
 Venezuela, Aug. 27, 1860, " V., 12 *Id.*, 1146.
 The Swiss Con- } Nov. 25, 1850, " V., 11 *Id.*, 590.
 federation, }

Convention between the United States and

- Brunswick and Luneburg, Aug. 21, 1854, Art. II., 11 *U. S. Stat. at L.*, 601.

Three years is given by the treaty between France and

- Honduras, Feb. 22, 1856, 7 *De Clercq*, 10.

And between the United States and

- Guatemala, Mar. 3, 1849, Art. II., 10 *U. S. Stat. at L.*, 874.
 Peru, July 26, 1851, " XV., 10 *Id.*, 932.
 Ecuador, June 13, 1839, " XII., 8 *Id.*, 535.

Two years is given by the treaty between the United States and

Hesse Cassel, Mar. 26, 1844, Art. II., 9 *U. S. Stat. at L.*, 818.

Bavaria, Jan. 21, 1845, " II., 9 *Id.*, 827.

Saxony, May 14, 1844, " II., 9 *Id.*, 830.

Nassau, May 27, 1846, " II., 9 *Id.*, 850.

Independent of such treaties, the present rule is that if, by the law of the *situs* of any immovables, any person has a capacity or incapacity, as from alienage, to take immovables, such capacity or incapacity will everywhere affect such person as to those immovables. *Story*, § 430. And the American authorities generally extend the same rule to disabilities from any cause. This is opposed by some jurists. See the Titles concerning the **CONDITION OF PERSONS and PROPERTY**.

The existing disabilities of aliens are discussed in the pamphlet by *Sir A. Cockburn*, on *Nationality*, before referred to.

The desirableness of removing these disabilities, in respect to the tenure of real property, was distinctly recognized by the United States, in the treaty with France, Feb. 23, 1853, Art. VII., 10 *U. S. Stat. at L.*, 996.

The rule proposed removes the disabilities of aliens, in respect to property, only as between the nations uniting in the Code, and their members.

It has been well observed, that the dangers arising from allowing aliens to hold land, are not greater than those arising from allowing them to be fund-holders. *Transactions of National Association for Promotion of Social Science*, 1861, p. 787.

Foreigners enabled to transmit property.

335. Title to and interest in property, movable or immovable, may be derived from and through foreigners, in the same manner and with the same effect as from and through members of the nation.

By some systems of law, an inheritance between citizens could not be traced through an alien.

Right to remove property.

336. The movables of a foreigner may be freely removed by him from the territory of the nation, without hindrance or special imposts.

Bluntschli, Droit Intern. Codifié, § 393.

Treaty between the United States and Hanover, 1846, Art. X., 9 *U. S. Stat. at L.*, 864; and numerous other treaties. The time allowed for removal, in case of war, is the proper subject for regulation in the Book on **WAR**.

Absence of heirs.

337. In defect of heirs, or in their absence from a

country, the property of a deceased foreigner is entitled to the same protection as if it were the property of a member of the nation, under the same circumstances.

This provision is in substance from the treaty between Great Britain and

Colombia, Feb. 16, 1866, *Accounts and Papers*, 1867, vol. LXXIV.

Madagascar, July 5, 1866, *Id.*, 1867, vol. LXXIV.

Italy, Aug. 6, 1863, *Id.*, 1864, vol. LXVI.

San Salvador, Oct. 24, 1862, *Id.*, 1863, vol. LXXV.

Nicaragua, Feb. 11, 1860, *Id.*, 1860, vol. LXVIII.

A number of French and American treaties, cited under the other articles, recognize the same principle.

Death of persons who are foreigners, or not domiciled.

338. In case of the death, within the territory of a nation, of any person not there domiciled, or of a foreigner of whatever domicil, or in case, on the death of such person or foreigner, without the territory of the nation, his body or movables are brought within its territory, the local authorities must notify the fact to the consul of the nation in which the deceased was domiciled and resident, within the district where the death or arrival takes place; or, if there be no such consul there, then to the nearest consul of such nation.¹

If the deceased was a foreigner domiciled within the nation, then such notice must be given to the consul of the nation of which he was a member.²

If the consul first has knowledge of such a fact, he must notify it to the local authorities.

¹ This article is suggested by the consular conventions between France and Brazil, December 10, 1860, Art. VII., 8 *De Clercq*, 153, (interpreted by declaration of July 21, 1866, 9 *De Clercq*, 600;) between France and Portugal, July 11, 1866, Art. VIII., 9 *De Clercq*, 582; the convention between France and Austria, for the regulation of successions, December 11, 1866, Art. III., 9 *De Clercq*, 675; and the convention between the United States and Italy, February 8, 1868, Art. XVI., 15 *U. S. Stat. at L.*, (Tr.,) 185. And brief provisions to somewhat the same effect as this and the following article, are contained in the treaty of friendship, commerce and navigation between France and Russia, June 14, 1857, Art. XX., 7 *De Clercq*, 278.

² If the domicil was foreign, the notice should be given to the consul

of that nation, of such *domicil*; because, at the domicile will be the place of principal administration.

If the domicile be within the nation where the death occurred, the notice should be given to the consul of the nation of which the decedent was a *member*, because his heirs and next of kin are likely to be there, if not present at the place of domicile.

Consul may send home assets of seamen, &c.

339. If the deceased was a seaman on a private ship, or other inmate thereof except a passenger,¹ and his private property within the nation, including arrears of pay or other moneys due him, do not exceed five hundred dollars, all the property shall be delivered or paid to the consul, for the benefit of the persons interested.

This and the following provisions are intended to give the consul, in the absence of foreign heirs, &c., the right to administer in the local courts, according to the ordinary procedure, except in the case of sailors, &c., where the assets are trifling in amount, in which case the consul need not institute an administration, but may send the property home at once.

The existing rules are quite diverse. The consular convention between France and Portugal, July 11, 1866, Art. X., (9 *De Clercq*, 582,) provides that the consuls shall have exclusive charge of the inventory and other administrative acts for the preservation of the movable effects of every kind left by men of the sea and by passengers of their nation who die on land, or on board the ships of their country, whether on the voyage or at the port of destination.

By the English consular regulations, if a seaman dies on a voyage of a British vessel not homeward bound, the consul of a port at which it touches may collect the wages and take the other effects, to facilitate the settlement of the estate. *Instructions to Consuls*, 1856, p. 35, § 91.

This applies to all persons employed on merchant vessels, except the master. *Id.*, p. 37, § 99.

It is made the duty of consuls also to claim and receive, if possible, the effects of British seamen dying within the consulate, in whatever service they may have been engaged.

It is understood that an arrangement has recently been made between the North German Confederation and England, according to which the effects of a German sailor dying in a British ship, including the balance of his pay, should the entire value not exceed fifty pounds, will be delivered to the North German consul in London, while the property of British sailors dying on North German vessels will be placed in the hands of the English consul of the district in which the crew is discharged.

¹ There seems to be propriety in extending this provision to all cases mentioned in Article 337, where the assets are less than the specified sum, instead of restricting it to seamen.

By the treaty between the United States and The Two Sicilies, Oct. 1, 1855, Art. VII., (11 *U. S. Stat. at L.*, 639,) the consul is entitled to receive the effects of his countrymen without distinction, if formal opposition is not made by creditors, or, being made, is legally overruled.

Consul entitled to administer.

340. In cases other than those provided for in the last article, if the deceased leaves no executor, or person interested by succession or will, who, being competent, claims to administer, within the time limited by the law of the place, the consul, in preference to all other persons, shall be authorized by the local authorities to administer the assets, proceeding according to the local law,¹ but subject to the provisions of Division Second, on PRIVATE INTERNATIONAL LAW.²

¹ This is substantially the rule stated in the treaty between the United States and the Argentine Confederation, July 27, 1853, Art. IX., (10 *U. S. Stat. at L.*, 1009,) which provides, that if a citizen of one nation die intestate in the other, the consul of his nation may intervene in the possession, administration, and judicial liquidation of the estate, conformably to the laws of the country, for the benefit of creditors and heirs.

So by the consular convention between France and Brazil, December 10, 1860, Art. VII., (8 *De Clercq*, 153,) the right of administration upon the movables of a foreigner not domiciled in the country where the movables are, belongs to the consul of the nation to which the deceased appertained.

The administration and settlement of the succession of a Frenchman deceased in Brazil, is, according to that treaty, to be regulated in the following manner:

When a Frenchman deceased in Brazil leaves only Brazilian heirs, or when, together with French heirs who have attained majority, and who are present and capable, he leaves Brazilian heirs, minors, absent or incapable, the French consul shall not intervene.

When there shall be among the heirs of a Frenchman deceased in Brazil one or more French minors, absent or incapable, the consul shall have exclusive administration of the succession, if there is neither a widow of Brazilian origin, nor a Brazilian heir the head of a family, nor testamentary executor, nor Brazilian heirs who are minors, absent or incapable.

If there are at the same time one or more French heirs who are minors, absent or incapable, then, whether there be a widow of Brazilian origin,

or a Brazilian heir the head of a family, or testamentary executor, or one or more Brazilian heirs who are minors, absent or incapable, the French consul shall administer the succession conjointly with the Brazilian widow, or the chief of family, or the testamentary executor, or the representative of the Brazilian heirs aforesaid.

It is understood that minor heirs, born in Brazil of French parents, are to be treated as having the status of their father until their majority. It is equally understood that *légataires universels* are treated as heirs.

Reciprocally, the succession of a Brazilian deceased in France will be administered and settled after the same rule, so far as not contrary to French law.

Other provisions regulate, in detail, the duties of a consular officer in carrying out the administration of these estates.

The treaty between the United States and Peru, July 26, 1851, Art. XXXIX., (10 *U. S. Stat. at L.*, 945,) makes the consuls, *ex officio*, the executors or administrators of their countrymen, in the absence of the legal heirs or representatives, but directs that if the deceased was engaged in trade, the assets shall be held twelve months, to allow creditors to present their claims.

By the treaty between the United States and Nicaragua, June 21, 1867, Art. VIII., (15 *U. S. Stat. at L.*, (*Tr.*) 59,) the minister or consul may nominate curators to take charge of the property of an intestate, so far as the local law will permit. See, also, the treaty with Paraguay, February 4, 1859, Art. X., 12 *U. S. Stat. at L.*, 1096.

The system adopted by the recent French treaties, [consular convention between France and Portugal, July 11, 1866, Art. VIII., (*De Clercq*, vol. 9, p. 582;) convention between France and Austria, for the regulation of successions, December 11, 1866, Art. III., (*De Clercq*, vol. 9, p. 675;) consular convention between France and Brazil, December 10, 1860, Art. VII., 8 *De Clercq*, 153,] involves a regulation of the proceedings in great detail.

The provisions of those treaties may be indicated together, as follows:
The consul is authorized and required:

1. To seal up all the effects, movables and papers of the deceased, having given forty-eight hours' notice thereof to the competent local authorities, who are entitled to be present, if they so determine, to add their own seal to that which shall be affixed by the consul; and if this be done, the double seals shall not be broken except by the concurrence of both.

Whenever the local authorities are first informed of the death, and when, according to the law of the country, they are bound to seal the effects of the deceased, they shall invite the consular officer to unite with them in this act.

In case an immediate sealing seems absolutely necessary, but this operation, by reason of the distance or other causes, cannot be done by both authorities in common, the local authorities or the consular officer, as the

case may be, may affix the seal, without awaiting the arrival of the other officer, and without prejudice to his right of subsequently affixing his seal.

2. To draw up, also, in presence of the competent local authorities, if they choose to be present, after such notice, an inventory of all the goods and chattels which were possessed by the decedent.

3. To cause the sale, at public auction, of all the movables constituting the inheritance of the decedent which are perishable, or subject to depreciation, and also of merchandise intended for sale, for the sale of which a favorable opportunity offers, giving first timely notice to the local authorities, to the end that the sale may be made in the form prescribed, and by competent agencies, according to the law of the country.

Where the local authorities cause such sale, they must give notice to the consular officer to be present

4. To deposit in safe keeping the effects and valuables inventoried, to preserve the account of the debts which they collect, as well as the proceeds of the sales which they receive, in the consular office, or in some place of commercial deposit affording proper security.

In either case, such deposit must be made by agreement of the local authorities, called in to concur in the previous proceedings, if, by reason of the provision of the next subdivision, the inhabitants of the country or the members of a third nation claim to be interested in the estate, or, if required by the local authorities, for the security of any charges authorized by the laws of the country.

5. To announce the death, and to summon, by means of one or more of the public journals within their consular jurisdiction, and also, if necessary, journals of the country of the deceased, the creditors of the estate to present their respective claims, duly authenticated, within the time fixed by the laws of the respective countries.

If creditors of the estate present themselves, the payment of their demands ought to be accomplished in the space of fifteen days after the making the inventory, if there be sufficient means ready, and applicable thereto; and if not, as soon as necessary funds can be realized by the most convenient means; or finally, within a day fixed by agreement between the consular officer and the majority of those interested.

6. In case of the insufficiency of the assets to satisfy the full payment of the debts proved, all the documents, effects, and other valuables belonging to the estate must, on the demand of the creditors, be surrendered to the competent judicial authorities of the place, or to a court of bankruptcy, according to the law of the country; in which case, the consular officer remains charged with representing the members and domiciled residents of his nation interested in the estate, who may be absent, minors, or otherwise incapable.

In any case, the consular officer cannot deliver the assets or their proceeds to the heirs or next of kin, or the beneficiaries under the will, until after having satisfied all the debts which the decedent may have contracted in the country.

7. To administer and settle, either themselves, or by the appointment of a person named by them, and acting under their responsibility, the goods and chattels of the estate, if the period fixed by the local authorities, according to the laws of the country, for its own members, or those of a third nation, domiciled in the country, to present their demands, is not expired, and if there be no dispute as to such demands; but in either such case, the consular officer must relinquish the settlement of the estate to the proper legal authorities, and limit his interference to those administrative measures which will not involve these questions, leaving the decision of such questions, so far as they do not depend upon the title to the succession or the distribution, under the will, to the exclusive control of the courts and tribunals of the country.

Having in such cases relinquished the administration to the local authorities, the consular officer continues to be the representative of the succession and the beneficiaries under the will, for the purpose of protecting the rights of the parties interested, and has power, if necessary, to employ counsel for the protection of those rights.

After the judgment has been pronounced upon the demands so reserved to the decision of the tribunals of the country, or after the sum required for their payment has been determined, the entire movable assets, except those which may be necessary to remain as security, shall be, after the removal of the seals imposed by the local authorities, delivered for its final disposal to the consular officer.

8. To procure his own appointment, if that be necessary, as administrator, or as administrator with the will annexed, if an executor has been named, but has declined the trust, or is unknown, absent, or incapable.

² If the deceased was domiciled in another nation, the administration will be ancillary to any administration instituted at home. If he was a foreigner domiciled at the place of his death, the administration will be the principal one. In either case, the consul's proceedings should be, in other respects, according to the local law, and under the authorization of the probate court.

Security not required.

341. A consul entitled to administration under the last article, shall not be required to give security for the performance of his duties.

Inasmuch as he only intervenes for the interest of his countrymen, his official responsibility seems enough.

Local authorities to administer in absence of consul and all other authorized persons.

342. In the absence of the consul and secretary of legation, and of all other representatives in interest of the foreign parties, the local authorities shall administer the estate without unnecessary delay or expense,

and shall render account thereof to the nearest consul or the secretary of legation of the nation of the foreigners entitled, and shall deliver and pay to him that which belongs to such members of his nation as do not appear to claim the same.

Suggested by the consular convention between France and Portugal, July 11, 1866, Art. VIII., (9 *De Clercq*, 582,) and the convention between France and Austria, for the regulation of successions, December 11, 1866, Art. III., (9 *De Clercq*, 675,) which also provide that if in such case the nearest consular officer appears, either in person or by delegate, in the place of administration, the local authorities who have intervened must comply with the requirements giving him the right to act.

By the treaty between France and Peru, March 9, 1861, Art. XXXVII., subd. 5, (8 *De Clercq*, 193,) the payment of the assets to the consul is without prejudice to the right of creditors subsequently presenting themselves within the time prescribed by the statute of limitations of the country to which the decedent belonged.

Notice to be given of successions in which foreigners are interested.

343. If a foreigner, absent or incompetent, is interested, by succession or will, in the property, movable or immovable, of any deceased person whomsoever, which is subject to the administration of a nation, the local authorities must notify the existence of the property to the nearest consul of the nation of the foreigner interested, and render account of the administration thereof, as prescribed in the last article.

Suggested by the convention between France and Austria, for the regulation of successions, Dec. 11, 1866, Art. III., 9 *De Clercq*, 675.

The treaty between the United States and The Two Sicilies, Oct. 1, 1855, Art. VII., (11 *U. S. Stat. at L.*, 639,) provides, that in the absence of the heir entitled to succeed under the treaty, or his representatives, the consul shall have notice from the judicial authority, of the time of imposing or removing seals, and making inventory, and may assist thereat.

Secretary of legation to act if there be no consul.

344. If there be no consul of the proper nation, who can act under the provisions of this Chapter, the secretary of legation of the same nation shall receive the notice and exercise the powers herein prescribed for consuls.

CHAPTER XXVII.

WRECKS.

Other treaties, containing similar provisions to those cited below, will be found. See 7 *De Clercq*, 10, 362, 586; 8 *Id.*, 193; 10 *U. S. Stat. at L.*, 87, Art. X.; (*Tr.*) 71, Art. XI.; 9 *Id.*, 55, Art. IV.; 67, Art. IV.; 79, Art. XI.; 8 *Id.*, 560, 534, Art. XI.; *British Accounts and Papers*, 1866, vol. LXXVI., (38.) See, also, *United States Consular Regulations*. (1870,) ¶¶ 209-218, and Treaties in Appendix.

ARTICLE 345. Duty of a nation to succor and protect.

346. Notice of wreck to consul of the ship's nation.

347. Power of consul or local authorities over wrecks.

348. Interference of local authorities restricted.

349. Property exempt from duties.

350. Local charges restricted.

351. Authorizing sale of wrecked property.

352. Ancient rule of wreck abolished.

353. Property to be restored to owner.

354. Duty of nation to provide for care of wrecked property.

355. Official sales.

Duty of a nation to succor and protect.

345. It is the duty of every nation to receive and protect foreigners, members of any nation whatever, and foreign ships,¹ public or private, wrecked or damaged on its coasts, or within its jurisdiction, or seeking refuge there from distress or perils of the sea, and allow them freely to prepare for and continue their voyages. Such ships, and the persons and property therein, must receive the same succor, and be subject to the same charges, salvage, or other burdens as domestic ships in like cases.²

This article and the next are in substance from the treaties between the United States and

Hayti,	Nov. 3, 1864,	Art. XV., 13	<i>U. S. Stat. at L.</i> , 711.
Bolivia,	May 13, 1858,	" IX., 12	<i>Id.</i> , 1009.
Venezuela,	Aug. 27, 1860,	" XI., 12	<i>Id.</i> , 1149.
Netherlands,	Oct. 8, 1782,	" XVII., 8	<i>Id.</i> , 42.
Sweden,	April 3, 1783,	" XXI., 8	<i>Id.</i> , 72.
Prussia,	1785,	" IX., 8	<i>Id.</i> , 84.
Morocco,	Jan., 1787,	" X., 8	<i>Id.</i> , 100.
Nicaragua,	June 21, 1867,	" XIII., 15	<i>Id.</i> , 67.
Guatemala,	Mar. 3, 1849,	" VIII., 10	<i>Id.</i> , 876.
Peru,	July 26, 1851,	" XVII., 10	<i>Id.</i> , 933.

Similar provisions are contained in the treaty between France and Honduras, February 22, 1856, Art. XII., (7 *De Clercq*, 10.) See, also, treaty between France and Nicaragua, April 11, 1859, Art. XII., (7 *Id.*, 586.)

¹ These provisions have been extended to ships of whatever nationality, because it is the interest of each nation that their members should be succored in distress, without reference to the nationality of the ship.

² Provisions exempting ships of either nation on the coasts of the other, or driven into ports of distress, from all charges except those of pilotage, light-house dues, and others representing the compensation of private industry, provided that the vessels do not lade or unlade cargo, are contained in the treaty between France and San Salvador, Jan. 2, 1858, Art. XIV., 7 *De Clercq*, 362.

Somewhat similar provisions as to freedom from charges are contained in the treaty between France and New Granada, May 15, 1856, Art. XV., 7 *De Clercq*, 102.

A declaration relative to the treatment of ships driven into ports of distress, made between France and Hanover, April 10, 1856, (7 *De Clercq*, 86,) provides, that such ships shall be exempt from dues of the port or of navigation, if the necessity is real and evident, and if the ship does no commerce—discharge of cargo merely for the purpose of repairs, not being considered as such—and provided that the ship does not unnecessarily prolong its stay.

Upon the same conditions, the treaty between the United States and The Two Sicilies, October 1, 1855, Art. XVI., (11 *U. S. Stat. at L.*, 639,) secures to foreign ships the same treatment as domestic ships.

The doctrine is supported also by the opinion of the United States Attorney-General, in the case of *The Creole*, 4 *Opinions of U. S. Attorneys-General*, p. 98; also, in *Cases and Opinions in Constitutional Law*, by *For-syth*, p. 400, in which he says: The principle is, that if a vessel be driven by stress of weather, or forced by *vis major*, or, in short, be compelled by any overruling necessity to take refuge in the ports of another, she is not considered as subject to the municipal law of that other, so far as concerns any penalty, prohibition, tax, or incapacity that would otherwise be incurred by entering the ports, provided she do nothing further to violate the municipal law during her stay.

Notice of wreck to consul of the ship's nation.

346. In case of the wreck, stranding or distress of a foreign ship, public or private, on the coasts of a nation, or on navigable waters within its jurisdiction, if the nationality of the ship be known, the local authorities must immediately notify the fact to the consul of the nation to which the ship or wreck belongs, resident within the district; or, if there be none, then to the nearest consul; or, if none, to the secretary of legation of such nation, who, in the absence of the consul, shall have the powers conferred on consuls by this Chapter.

This and the three following articles are suggested by the convention between the United States and

Italy, Feb. 8, 1868, Art. XV., 15 *U. S. Stat. at L.*, (Tr.), 185.

France, Feb. 23, 1853, " XI., 10 *Id.*, 998.

Treaty of navigation between France and

Sweden and Norway, Feb. 14, 1865, 9 *De Clercq*, 172.

Treaty of commerce and navigation between France and

The Free Cities of Lu- beck, Bremen & Ham- burg,	} Mar. 4, 1865, Art. XXI., 9 <i>De Clercq</i> , 187.

Grand Duchy of Meck- lenburg - Schwerin, — (extended to the) Grand Duchy of Mecklenburg- Strelitz,	} June 9, 1865, " XVII., 9 <i>Id.</i> , 295.

Netherlands.	July 7, 1865, " XXXVII., 9 <i>Id.</i> , 337.
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Power of consul or local authorities over wrecks.

347. The consul of the nation to which the ship belongs,¹ and, in his absence and until his arrival, the local authorities may, for the purpose of saving it and the persons and property on board, take possession of the ship, and, if it be a private ship, may for the same purpose take command over the master, or other person having charge thereof.

Suggested by the British Merchant Shipping Act, 17 and 18 *Vict.*, c. 104, Part VIII., qualified by giving the consul the prior right.

¹ The consular convention between France and Portugal, July 11, 1866, Art. XIV., (9 *De Clercq*, 502,) which contains the same provision, adds, that in case of doubt respecting the nationality of the ship, the care of the wreck is subject to the exclusive direction of the local authorities.

Interference of local authorities restricted.

348. When the consul acts in the cases mentioned in the last article, the local authorities shall not otherwise interfere than for the maintenance of order, the protection of the interests of the salvors, not belonging to the crew, and to carry into effect the rules applicable to the entry and exportation of property saved.

Property exempt from duties.

349. Property saved, or landed to facilitate repairs, is not subject to duty or custom-house charges, unless admitted or intended for consumption within the jurisdiction of the nation.

In some of the treaties cargo landed to facilitate repairs is to be subject to the same charges as are payable by members of the nation in respect of its domestic vessels in like cases.

Local charges restricted.

350. The intervention of the local authorities, when permitted under this Chapter, cannot give rise to expenses other than those which the operations of quarantine,¹ salvage, and the preservation of the object saved, occasion, and such as would be imposed, in the case of domestic ships, under like circumstances.

Consular convention between France and

Austria, Dec. 11, 1866, Art. XIV., 9 *De Clercq*, 669.

Treaty between the United States and

Peru, July 26, 1851, Art. XVI., 10 *U. S. Stat. at L.*, 933.

¹ Treaty between the United States and

The Two Sicilies, Oct. 1, 1855, Art. XVII., 11 *U. S. Stat. at L.*, 639.

Authorizing sale of wrecked property.

351. In cases of necessity, in the absence of the owner or his agent, and inability reasonably to communicate with him, the consul may authorize the repair or sale¹ of wrecked or damaged property, with the sanction of the proper judicial authorities of the country, but not otherwise.²

¹ In reference to the sale, in a foreign country, of a ship belonging to a member of the consul's nation, the consul acts for the purpose of subsequently affording the relief granted by law, and for the purpose of secur-

ing the payment of any extra wages to seamen, required by the law of his nation. *United States Consular Regulations*, (1870,) ¶¶ 131, 132.

² *Bluntschli, Droit Intern. Codifié*, § 264, does not recognize such a restriction as this.

Perhaps, however, this power should be further restricted. Compare the terms of Article 390.

Ancient rule of wreck abolished.

352. Any property cast by the sea upon the land,¹ or floating, or sunken² in the navigable waters within the jurisdiction³ of any nation, unless voluntarily or freely⁴ abandoned by the owner, without intention of recovering it,⁵ may be reclaimed by him, or on his behalf, at any time before it has been otherwise disposed of, pursuant to the provisions of this Chapter.

¹ 2 *Kent's Commentaries*, 321.

² A canal boat sunk in a navigable river, was held not to be "wrecked property," within the New York statute concerning Wrecked Property, (1 *Rev. Stat.*, 690,) which only mentioned things cast by the sea upon the land. *Baker v. Hoag*, 7 *New York (3 Selden) Rep.*, 555; overruling *S. C.*, 3 *Barbour's Rep.*, 203; and 7 *Id.*, 113.

³ The provisions of the New York statute have been recently extended to things cast by any inland lake or river on the land. 1 *N. Y. Laws of* 1869, 1187, ch. 493.

⁴ The abandonment will not divest the owner of his right, unless it was freely as well as voluntarily made. A voluntary abandonment, under the constraint of danger or distress, may mark the property as derelict, and entitle salvors to peculiar compensation, but does not preclude his claim. *Abbott's U. S. Courts*, vol. 1, 574.

⁵ The intent to abandon may be inferred from a great lapse of time. *Bouvier's Dictionary*, Tit. "Derelicts."

Property to be restored to owner.

353. The property mentioned in this Chapter must be delivered when recovered,¹ or, if sold, the proceeds thereof must be paid to the consul of the owner's nation,² on claim being made within one year.³

¹ Treaty between the United States and Peru, July 26, 1851, Art. XVI., 10, *U. S. Stat. at L.*, 933.

² Treaty between the United States and The Two Sicilies, Oct. 1, 1855, Art. XVII., 11 *U. S. Stat. at L.*, 639.

³ A year (and a day) is fixed by several treaties. 8 *U. S. Stat. at L.*, 42, 72.

Duty of nation to provide for care of wrecked property.

354. It is the duty of every nation to provide by law for the protection and restoration of wrecked property and for the redress or punishment of violations of the rights of owners in respect thereto.

The provisions of the English law on this subject are in 17 & 18 *Vict.*, c. 104, Part. VIII.

Those in the State of New York are in the *Revised Statutes*, vol. 1, p. 690.

The essential points covered by these provisions may be briefly stated as follows :

1. Persons having wrecked property, who do not deliver it to the owner, or the proper officer, or who deface marks thereon, or disguise its appearance, with intent to conceal its identity, or who deface, destroy or suppress any document affecting the ownership ; and officers and agents of the government of the place, who detain any wrecked property, or its proceeds, after the expenses and salvage have been ascertained and tendered, or who are guilty of fraud, embezzlement, or extortion in reference thereto, are punishable criminally, and liable to an action by the person wronged.

2. By the English law, plundering and damaging wrecks is to be compensated for by the inhabitants of the district. 17 & 18 *Vict.*, c. 104, § 477.

3. Wrecked property, which is of a perishable nature, or which has been kept one year without being claimed, may be sold under the authority of the State, and the proceeds, after paying expenses and salvage, if not claimed within one year after the sale, shall accrue to the treasury of the State, or to the persons who by the local law are entitled to wreck found at the place in question.

Official sales.

355. A sale of wrecked property by or under the sanction of the local authorities, pursuant to law, transfers the title absolutely to a purchaser in good faith.

1 *Parsons on Shipping & Adm.*, 78, and note.

By the treaty between the United States and The Two Sicilies, above referred to, claims upon the property are to be determined by the local tribunals.

TITLE X.

DUTIES OF FOREIGNERS TO THE NATION.

CHAPTER XXVIII. Subjection to the laws.

XIX. Civil and military service.

XXX. Taxation.

CHAPTER XXVIII.

SUBJECTION TO THE LAWS.

ARTICLE 356. Subjection to the laws.

Subjection to the laws.

356. Except as otherwise provided by this Code, or by special compact, foreigners are subject to the constitution and laws of the country wherein they are, for the time being.

Bluntschli, (Droit Int. Codifié, § 388,) in stating this rule, adds, that allowance ought to be made for the fact that strangers do not understand the laws as well as citizens.

CHAPTER XXIX.

CIVIL AND MILITARY SERVICE.

ARTICLE 357. Civil service.

358. Military service.

Civil service.

357. Foreigners are exempt from all official functions.

Treaty between Great Britain and

Colombia, Feb. 16, 1866, Art. XVI., { *Accounts and Papers*, 1867,
vol. LXXIV., (36.)

Italy, Aug. 6, 1863, " XV., *Id.*, 1864, vol. LXVI., (35.)

Treaty between France and

The Free Cities of Lu-
beck, Bremen & Ham- } Mar. 4, 1865, Art. II., 9 *De Clercq*, 189.
burg,

Grand Duchies of Meck-
lenburg-Schwerin and } June 9, 1865, " II., 9 *Id.*, 295.
Strelitz,

Russia, June 14, 1857, " I., 7 *Id.*, 278.

The English Judicature Commission (Report of 1869,) recommend that aliens having been resident ten years shall, if qualified, be liable to do jury duty.

Military service.

358. Foreigners are exempt from military and naval service, except in the case of necessity for the purpose of defending the place where they are from brigands or savages.

Bluntschli, Droit Intern. Codifié, § 391.

Freedom of foreigners from compulsory military and naval service is recognized by the treaties between the United States and

Nicaragua, June 21, 1867, Art. IX., 15 *U. S. Stat. at L.*, (Tr.), 59.

Dominican Republic, Feb. 8, 1867, " II., 15 *Id.*, (Tr.), 167.

Paraguay, Feb. 4, 1859, " XI., 12 *Id.*, 1096.

Venezuela, Aug. 27, 1860, " II., 12 *Id.*, 1144.

Two Sicilies, Oct. 1, 1855, " V., 11 *Id.*, 639.

Treaty between France and

Russia, June 14, 1857, Art. II., 7 *De Clercq*, 278.

Nicaragua, April 11, 1859, " IV., 7 *Id.*, 586.

Swiss Confederation, June 30, 1864, " IV., 9 *Id.*, 91.

(Extended to the) French }
Colonies, } 9 *Id.*, 372.

Grand Duchy of Meck-
lenburg-Schwerin, (ex-
tended to the) Grand } June 9, 1865, " II., 9 *Id.*, 295.
Duchy of Mecklen-
burg-Strelitz, }

The Free Cities of Lubeck, }
Bremen and Hamburg, } March 4, 1865, " II., 9 *Id.*, 187.

By the treaty between the United States and the Swiss Confederation, Nov. 25, 1850, Art. II., (11 *U. S. Stat. at L.*, 587,) the members of either nation residing in the other are free from personal military service, but are liable to the pecuniary or material contributions chargeable on exempt citizens.

Heffter, Droit International, § 62, p. 125. *Papers relating to Foreign*

Affairs, 1862, p. 282. Mr. Stuart to Mr. Lenard, Sept. 6, 1862 : "The ordinary claim for exemption of alien residents from military service does not extend to service in the local police when imposed by the municipal law, or in companies formed exclusively for the maintenance of internal peace and order and for the protection of property."

CHAPTER XXX.

TAXATION.

ARTICLE 359. Jurisdiction to tax.

360. Taxes on the person.

361. Equality of taxes.

362. Corporations.

363. Shipping.

364. Property in transit.

365. Debts, and evidences of debt.

366. Commercial paper.

367. No nation to tax national obligations of another.

Jurisdiction to tax.

359. Subject to the provisions of this Chapter, each nation has exclusive power to impose taxes :

1. Upon all property within its jurisdiction, whether movable or immovable ;¹

2. Upon all property of its domiciled residents, and of corporations existing by virtue of its laws, which is not within another jurisdiction ; and,

3. Upon the exercise of any vocation within its jurisdiction.

¹ Taxes are a portion that each individual gives of his property in order to secure the perfect enjoyment of the remainder ; and the owner of property within the limits of any State, no matter whether it be real or personal, and no matter where he has his domicile, since he is entitled in respect to it to the protection of the State, is liable to taxes levied by such State. *Duer v. Small*, 7 *American Law Register*, 500 ; and see *Bluntschli, Droit Intern. Codifié*, § 377.

There are authorities, however, to the contrary, on the ground that double taxation, which this rule allows, is inequitable. *People ex rel. Hoyt v. Commissioners of Taxes*, 23 *New York Rep.*, 224. And see Report of *Wells* and others, Commissioners on *local taxation* in New York, (Harper's ed.,) pp. 43, 44, 65.

Taxes on the person.

360. Taxes in respect to the person can only be imposed by the nation in which the person is domiciled.

Bluntschli, (*Dr. Int. Cod.*, § 376,) qualifies this by adding that the country of origin may levy certain taxes on its own members domiciled abroad, (for example, taxes for the assistance of the poor,) but that the State of the domicil is under no obligation in reference to the collection thereof.

Equality of taxes.

361. No other or more burdensome taxes can be imposed upon foreigners, whether in respect to person, property, or vocation, than on the members of the nation.

Equality of taxes is secured by a number of treaties. See

Treaty between France and

Russia, June 14, 1857, Art. I., 7 *De Clercq*, 278.

Peru, March 9, 1861, " III., 8 *Id.*, 196.

Nicaragua, April 11, 1859, " IV., 7 *Id.*, 586.

Treaty between the United States and

Nicaragua, June 21, 1867, Art. IX., 15 *U. S. Stat. at L.*, (*Tr.*), 59.

Bluntschli, in stating the rule on this point, qualifies it by adding that the State may demand a sum in payment for the privilege of sojourning in the country. Treaty provisions forbidding such burdens are now so common that it seems advisable to discard that right.

This rule, perhaps, should be qualified by excepting foreign corporations, which it is usual, in some countries, to tax more heavily than domestic corporations.

Corporations.

362. The interests of owners of shares in the capital of a corporation are taxable as the personal property of such owners.

By the American law, the property of the corporation is distinguished from the interests of its shareholders, for the purposes of taxation, as well as for other purposes.

A State has no power to tax the interest of bonds, (secured in this case by mortgage,) given by a railway corporation, and binding every part of the road, when the road lies partially in another State; being one road owned by a company incorporated by the two States. The effect of allowing such tax would be to enable each State to tax property beyond its own limits. *Railroad Company v. Jackson*, 7 *Wallace's U. S. Supreme Court Rep.*, 262.

Upon considerations somewhat similar to those referred to, it may be suggested that shares in corporations, as distinguished from the property of the corporation, should not be taxable.

Shipping.

363. Shipping is taxable only by the nation whose character it bears.

This is the rule laid down in *Hays v. Pacific Mail Steamship Co.*, 17 *Howard's U. S. Sup. Ct. Rep.*, 596, as applicable at least so long as the vessel gains no *situs* in the foreign State.

See also *People ex rel. Hoyt v. Commissioners of Taxes*, 23 *New York Rep.*, 240; and Report of *Wells* and others, Commissioners on *Local Taxation*, Harper's ed., p. 45.

Property in transit.

364. Property of a foreigner, in transit between different jurisdictions, whether actually in motion or awaiting directions or means of transportation, is only taxable under ordinary revenue laws applicable to importation or exportation.

This rule we understand to be generally recognized. The power to tax property sent into a State, and lying there awaiting sale, seems clear, although the policy of it is questioned. Report of *Wells*, and others, Commissioners, on *Local Taxation*, Harper's ed., p. 45. The treaty between the United States and Belgium, 1858, Arts. XII. and XVI., (12 *U. S. Stat. at. L.*, 1046,) provides that during the period allowed by law for the warehousing of goods, no duties, other than those of watch and storage, shall be levied on articles brought from either country into the other, while awaiting transit, re-exportation, or entry for consumption.

And articles, the transit of which is allowed in Belgium, are exempt from transit duty there, when transportation is effected on Belgian railways.

Debts and evidences of debt.

365. Debts, and the evidences thereof, due from domiciled residents of a nation to another nation, or domiciled residents therein, are not taxable in either.

Sound political economy forbids the taxation of evidences of debt. (See Report of *Wells*, and others, Com'rs, on *Local Taxation*, Harper's ed., p. 45. They are instruments of commerce. The systems of England and France are understood to recognize this principle.

It is for each nation to adopt such a rule or not, for its own members; but in an international point of view, it is suggested that this rule should be observed. It leaves all tangible property to be taxed according to the previous rule.

Commercial paper.

366. Negotiable instruments made in one country, to be negotiated or paid in another, are not taxable, except by stamp duties in the nation where made,¹ and that where transferred.

¹ This rule is new.

A tax on the business of a dealer in exchange is not a tax on bills or commerce. *Nathan v. Louisiana*, 8 *Howard's U. S. Sup. Ct. Rep.*, 73. By the English law, foreign bills are liable to stamp duty, when paid, indorsed, transferred, or otherwise negotiated within the United Kingdom. *Griffin v. Weatherby*, *Law Rep.*, 3 *Queen's Bench*, 753.

No nation to tax national obligations of another.

367. No nation can tax the national obligations of another; nor its own obligations, except in the hands of its own members.

This rule is suggested as founded in comity, and one that will, on the whole, be equal and just in its operation.

The Report of *Wells*, and others, *Com'rs on Local Taxation*, (Harper's ed., p. 66,) states that, "England, Austria and Italy tax the non-resident holders of their national debts at the place where the debt is held to have been created or is now inscribed."

†

PART III.

UNIFORM REGULATIONS FOR MUTUAL CONVENIENCE.

- TITLE XI. SHIPPING.
- XII. IMPOSTS.
- XIII. QUARANTINE.
- XIV. RAILWAYS.
- XV. TELEGRAPHS.
- XVI. POSTAL SERVICE.
- XVII. PATENTS.
- XVIII. TRADE MARKS.
- XIX. COPYRIGHTS.
- XX. MONEY.
- XXI. WEIGHTS AND MEASURES.
- XXII. LONGITUDE AND TIME.
- XXIII. SEA SIGNALS.

COMMERCIAL REGULATIONS.—A number of provisions affecting commerce are contained in the preceding Chapters of this Book, particularly in Chapter VI., on NAVIGATION; in Chapter IX., concerning FISHERIES; in Chapter XVIII., Section II., entitled the EXTRADITION OF DESERTERS, and in Titles IX. and X., relating to the DUTIES OF A NATION TO FOREIGNERS, and the DUTIES OF FOREIGNERS TO THE NATION.

Those provisions are there placed, because they define what are regarded as the intrinsic rights of nations, or are proposed as modifying the absolute rights there stated.

The provisions of this Part, although to some extent cognate to those above referred to, have an independent character, as a system of regulations founded not so much on questions of right and obligation, as on the convenience of having uniform rules for the facilitation of commercial and social intercourse; and they are, therefore, presented here, in connection with others originating in the same general purpose.

TITLE XI.

SHIPPING.

- CHAPTER XXXI. General provisions.
XXXII. Rules of navigation, [law of the
road at sea.]
XXXIII. Collision.
XXXIV. Average.
XXXV. Salvage.]
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CHAPTER XXXI.

GENERAL PROVISIONS.

- ARTICLE 368. Definition of "ship."
369. "Appurtenances" defined.
370. Employment of ships.
371. Foreign navigation.
372. Domestic navigation.
373. Foreign and domestic ships distinguished.
374. Owner for the voyage.
375. Registry, enrollment and license.
376. Value of ship.

Definition of "ship."

368. The term "ship," as used in this Code, signifies any structure fitted for navigation. Every kind of ship is included in the term "shipping."

"Appurtenances" defined.

369. The term "appurtenances," as used in this Code, in respect of a ship, includes all things belonging to the owners, which are on board of the ship, or attached to it, and are connected with its proper use for the objects of the voyage and adventure in which the ship is engaged.

See 1 *Parsons' Maritime Law*, 71.

Employment of ships.

370. Ships are engaged either in foreign or domestic navigation, or in the fisheries.

Foreign navigation.

371. Ships are engaged in foreign navigation, when passing to or from a foreign country, or in any service connected therewith.

Domestic navigation.

372. Ships are engaged in domestic navigation, when passing, for carriage or traffic, between places within the same nation, or in any service within the nation, connected therewith.¹

Receiving or discharging part of a foreign cargo, or of foreign passengers, at one port, and another part of the same at another port, is not domestic navigation, as here defined.²

¹ This will include both the coasting trade and internal navigation.

By the treaty between the United States and the Netherlands, Aug. 26, 1852, Art. IV., (10 *U. S. Stat. at Large*, 984,) the trade from island to island in the Eastern Archipelago, and from Atlantic to Pacific ports in the United States, is considered as coasting trade.

² Convention between the United States and

Dominican Republic, } Feb. 8, 1867, Art. VII., 15 *U. S. Stat. at L.*, (Tr.), 167.

Treaty between the United States and

Bolivia, May 13, 1858, Art. III., 12 *U. S. Stat. at L.*, 1004.

Venezuela, Aug. 27, 1860, " VII., 12 *Id.*, 1147.

Two Sicilies, Oct. 1, 1855, " XIII., 11 *Id.*, 647.

Netherlands, Aug. 26, 1852, " IV., 10 *Id.*, 984.

Foreign and domestic ships distinguished.

373. A ship, when within the limits of its own nation, is called a domestic ship; within the limits of another nation, it is called a foreign ship.

In the United States, a ship is called domestic or foreign in any State, according as it belongs to that State, or any other. In this Code, these words depend on nationality.

Owner for the voyage.

374. If the owner of a ship commits its possession¹ and navigation to another, that other, and not the owner, is responsible for its repairs and supplies.

¹ As a general rule, the party that mans the vessel is considered as in possession. *Palmer v. Gracie*, 4 *Washington's U. S. Circuit Ct. Rep.*, 110; *Marcadier v. Chesapeake Ins. Co.*, 8 *Cranch's U. S. Sup. Ct. Rep.*, 39; *The*

Sch. Volunteer, 1 *Sumner's U. S. Circ. Ct. Rep.*, 551; Logs of Mahogany, 2 *Id.*, 589.

Registry, enrollment, and license.

375. The registry, enrollment, and license of ships are regulated, in each nation, by its own laws. The national character of shipping is defined by Chapter XX.

3 *Kent's Commentaries*, 133; Hesketh v. Stevens, 7 *Barbour's (New York) Rep.*, 488.

Value of ship.

376. The value of a ship, when not fixed or ascertained by agreement of the parties, is her value for sale at the port to which she belongs, less the expense of returning her there, including insurance.

For a discussion as to the tests of value of a ship, see *Transactions of National Association for Promotion of Social Science*, 1863, p. 875.

CHAPTER XXXII.

RULES OF NAVIGATION, [LAW OF THE ROAD AT SEA.]

The provisions of this Chapter are those issued in pursuance of the *British Merchant Shipping Act*, 1862, Table c, § 25, made applicable, by consent of the nations, to the ships of the following countries, whether within British jurisdiction or not. *British Order in Council*, of July 30, 1868.

Austria.
Argentine Republic.

Belgium.

Brazil.

Bremen.

Chili.

Denmark Proper.

Equator, Republic of the.

France.

Great Britain.

Greece.

Hamburg.

Hanover.

Hawaiian Islands.

Hayti.

Italy.

Lubeck.

Mecklenburg-Schwerin.

Morocco.

Netherlands.

Norway.

Oldenburg.

Peru.

Portugal.

Prussia.

Roman States.

Russia.
Schleswig.
Spain.
Sweden.

Turkey.
United States, sea-going ships.
United States, inland waters.
Uruguay.

ARTICLE 377. Law of the road at sea.

Rule 1. Steam and sail.

2. Night-lights.
3. Lights for sea-going steamships.
4. Lights for steam-tugs.
5. Lights for sailing ships.
6. Exceptional lights for small sailing ships.
7. Lights for ships at anchor.
8. Lights for pilot vessels.
9. Lights for fishing vessels and boats.
10. Fog-signals.
11. Two sailing ships, or two ships under steam, meeting.
12. Two sailing ships crossing.
14. Two ships under steam crossing.
15. Sailing ship and ship under steam.
16. Ships under steam to slacken speed.
17. Ships overtaking other ships.
18. Construction of preceding rules.
19. Proviso to save special cases.
20. No ship under any circumstances to neglect proper precautions.

378. Duty of succor.

Law of the road at sea.

377. The following rules of navigation constitute the law of the road at sea :

In addition to which, all rules concerning the lights or signals to be carried by ships navigating the waters of any harbor, river, or other inland water, or concerning the steps for avoiding collision, to be taken by such ships, which have been, or may hereafter be, made by or under the authority of any local law, shall continue and be of full force and effect in respect to domestic ships in all cases, and in respect to foreign ships having notice of such rules ; but foreign ships, which are not shown to have had notice thereof, are not bound thereby.

Merchant Shipping Act of 1854, § 31; modified by inserting the exemption of foreign ships without notice.

The local regulations of a harbor have been held by the American courts as not applicable in questions of collision, as against foreign ships engaged in general commerce. Such a ship carrying the light required by the admiralty rules, is not in fault for not showing a different one required by local law. *The New York v. Rea*, 18 *Howard's U. S. Sup. Ct. Rep.*, 223; *Snow v. Hill*, 20 *Id.*, 543. But see, also, *The James Gray v. The John Fraser*, 21 *Id.*, 184; *The E. C. Scranton*, 3 *Blatchford's U. S. Circ. Ct. Rep.*, 50; *Smith v. Condry*, 1 *Howard's U. S. Sup. Ct. Rep.*, 28. And compare Article 60, concerning restrictions on the right of navigation.

Steam and sail.

Rule 1. In the following rules, every steamship, which is under sail and not under steam, is to be considered a sailing ship; and every steamship, which is under steam, whether under sail or not, is to be considered a ship under steam.

Article 1 of *British Regulations*, 1868.

Night lights.

Rule 2. The lights mentioned in the following rules, numbered 3, 4, 5, 6, 7, 8 and 9, and no others, must be carried in all weathers, from sunset to sunrise.

Article 2 of *British Regulations*. The meaning is that the lights shall be fairly visible. *Sea Nymph of Chester*, *Holt's Rule of the Road at Sea*, p. 34.

Lights for sea-going steamships.

Rule 3. Sea-going steamships, when under way,¹ must carry :

1. At the foremast head,² a bright white light, so constructed as to show an uniform and unbroken light over an arc of the horizon of twenty points of the compass, so fixed as to throw the light ten points on each side of the ship, viz: from right ahead to two points abaft the beam on either side, and of such a character as to be visible on a dark night, with a clear atmosphere, at a distance of at least five miles ;

2. On the starboard side, a green light, so constructed as to show an uniform and unbroken light over an arc of the horizon of ten points of the compass, so fixed as

to throw the light from right ahead to two points abaft the beam on the starboard side, and of such a character as to be visible³ on a dark night, with a clear atmosphere, at a distance of at least two miles ;

3. On the port side, a red light, so constructed as to show an uniform and unbroken light over an arc of the horizon of ten points of the compass, so fixed as to throw the light from right ahead to two points abaft the beam on the port side, and of such a character as to be visible⁵ on a dark night, with a clear atmosphere, at a distance of at least two miles ;

4. The said green and red side lights⁴ must be fitted with inboard screens, projecting at least three feet forward from the light, so as to prevent these lights from being seen across the bow.

Article 3 of *British Regulations*. See *The Louisa v. The City of Paris*, *Holt's Rule of the Road*, p. 15.

¹ A vessel with her anchor down, but not actually holden by and under the control of it, is "*under way*," within the meaning of the Admiralty regulation, (1858,) and is bound to exhibit colored lights. *The Esk* ; *The Gitana*, *Law Rep.*, 2 *Adm. & Ecc.*, 350.

A vessel driven from her anchor by a gale of wind, and setting sail to get out to sea, is, even if wholly unmanageable, "*under way*," within the meaning of the Admiralty regulation, (1858,) and is bound to exhibit colored lights ; and an omission to exhibit them is negligence. *George Arkle*, *Lushington's Rep.*, 382.

² It has been proposed that there be added after "foremast head," the words "or below the foreyard, where it can be best seen." *Jenkins' Rule of the Road at Sea*, p. 68.

³ The lights must be so placed as to be visible to an approaching vessel on that side.

Lamps duly screened and fixed on stands secured to the paul-bitts of the windlass, are not placed in a proper position, as required by the regulations of 1863, respecting lights. *The Gustav* ; *The New Ed*, 9 *Law Times Rep.*, (N. S.), 547.

⁴ The insertion of the words "shall be carried," after "red side lights," has been proposed. *Jenkins' Rule of the Road at Sea*, p. 68

Lights for steam-tugs.

Rule 4. Steamships, when towing other ships, must carry two bright white masthead lights vertically, in addition to their side lights, so as to distinguish them from other steamships. Each of these masthead lights

must be of the same construction and character as the masthead lights which other steamships are required to carry.

Article 4 of *British Regulations*.

Lights for sailing ships.

Rule 5. Sailing ships under way, or being towed, must carry the same lights as steamships under way, with the exception of the white masthead lights, which they must never carry.

Article 5 of the *British Regulations*.

A proposed modification, printed in *Jenkins' Rule of the Road at Sea*, (p. 69,) substitutes the following for the above :

"Sailing ships under weigh, or being towed, shall carry side lights only, namely, a green light on the starboard side, and a red light on the port side, (of the same character, and in the same relative position, and screened similar to those of steamers, as in Article 3.)"

"If a sailing ship is not astern of the towing steamer, but is lashed alongside of her, or has one in either side of her, then she shall carry a bright white light at the foremast head, or below the foreyard, (where it can be best seen,) in addition to the two side lights, and the steamers shall carry none."

"*Lights astern*. Any vessel seeing the lights of another coming up astern of her, shall exhibit or wave a light at the stern until such vessel has passed."

Exceptional lights for small sailing ships.

Rule 6. Whenever, as in the case of small ships during bad weather, the green and red lights cannot be fixed, these lights must be kept on deck, on their respective sides of the ship, ready for instant exhibition, and, on the approach of or to other vessels, must be exhibited on their respective sides in sufficient time to prevent collision, in such manner as to make them most visible, and so that the green light shall not be seen on the port side, nor the red light on the starboard side.

To make the use of these portable lights more certain and easy, the lanterns containing them must each be painted on the outside with the color of the light they respectively contain, and must be provided with suitable screens.

Article 6 of *British Regulations*, as amended, 1863.

Lights for ships at anchor.

Rule 7. Ships, whether steamships or sailing ships, when at anchor in roadsteads or fairways, must¹ exhibit, where it can best be seen, but at a height not exceeding twenty feet above the hull, a white light,² in a globular lantern 6" eight inches in diameter, and so constructed as to show a clear, uniform and unbroken light, visible all round the horizon, and at a distance of at least one mile.

Article 7 of *British Regulations*.

¹ By Order in Council of January, 1863, the words "between sunset and sunrise," were omitted here.

² It has been proposed to substitute the words "a bright white light only," for the words "a white light," after "hull." *Jenkins' Rule of the Road at Sea*, p. 70.

Lights for pilot vessels.

Rule 8. Sailing pilot vessels must not carry the lights required for other sailing vessels, but must carry a bright white light at the masthead, visible all round the horizon, and must also exhibit a flare-up light every fifteen minutes.

Article 8 of *British Regulations*.

Proposed alterations suggest that the range and intensity of the lights, and a fixed relative position for the side lights, should be determined. *Jenkins' Rule of the Road at Sea*, p. 72.

Lights for fishing vessels and boats.

Rule 9. Open fishing boats and other open boats shall not be required to carry the side lights required for other vessels; but if they do not carry such lights, they must carry a lantern having a green slide on the one side and a red slide on the other side; and on the approach of or to other vessels, such lantern must be exhibited in sufficient time to prevent collision, so that the green light shall not be seen on the port side, nor the red light on the starboard side.

Fishing vessels and open boats, when at anchor, or attached to their nets, and stationary, must exhibit a bright white light.

Fishing vessels and open boats shall, however, not be

prevented from using a flare-up light in addition, if considered expedient.

Article 9 of *British Regulations*.

Fog-signals.

Rule 10. Whenever there is fog, whether by day or night, the fog-signals described below must be carried and used, and must be sounded at least every five minutes, viz :

1. Steamships under way must use a steam-whistle, placed before the funnel, not less than eight feet from the deck ;

2. Sailing ships under way must use a fog-horn ;

3. Steamships and sailing ships, when not under way, must use a bell.

Article 10 of *British Regulations*.

Two sailing ships, or two ships under steam, meeting.

Rule 11.¹ If two sailing ships, or two ships under steam, are meeting, end on, or nearly end on, in such manner as to involve risk of collision, the helms of both must be put to port, so that each may pass on the port side of the other.²

This rule only applies³ to cases where ships are meeting end on, or nearly end on, in such a manner as to involve risk of collision, and does not apply to two ships which must, if both keep on their respective courses, pass clear of each other.

The only cases in which it applies, are when each of the two ships is end on, or nearly end on, to the other : in other words, to cases in which, by day, each ship sees the masts of the other in a line, or nearly in a line, with her own, and, by night, to cases in which each ship is in such a position as to see both the side lights of the other. It does not apply, by day, to cases in which a ship sees another ahead crossing her own course ; or, by night, to cases where the red light of one ship is opposed to the red light of the other ; or, where

the green light of one ship is opposed to the green light of the other ; or, where a red light without a green light, or a green light without a red light, is seen ahead ; or, where both green and red lights are seen anywhere but ahead.

¹ Articles 11 and 13 of *British Regulations*.

² The following substitutes for the first paragraph have been proposed. (*Jenkins' Rule of the Road at Sea*, p. 72 :)

" A sailing ship on the port tack shall keep out of the way of a sailing ship on the starboard tack, and a sailing ship which is to windward shall keep out of the way of a sailing ship which is to leeward."

" A steamer having another end on, shall port.

On her port side, shall port."

³ The qualifications which follow are from the Order in Council of 1868.

This amendment of the rule seems to have introduced uncertainty in its practical application.

The collision of the *Bombay* with the *Oneida*, near Yokohama, Japan, January 24, 1870, gave rise to a discussion of the terms of this rule in the *Pall Mall Gazette*, issues of March 21st, 22nd and 24th, and April 12th, 1870.

In the issue of the 21st March, a writer (" Byng Giraud ") avers, that collisions at sea are to some extent caused by what he supposes to be the unsettled state of the rule of the road at sea.

And in the issue of the 24th March, the same writer quotes the language of Mr. S. Cave, Vice-President of the Board of Trade: " Collisions are not caused by observance, but by neglect or misconception, of these rules."

In the issue of March 22nd, a writer (" T. G. ") says, in substance, as follows :

Article 13 applies to two ships under steam, each meeting the other " end on, or nearly end on."

In no other position than end on, or nearly end on, will each show to the other both her colored side lights. And in the case of such meeting, each ship is required by this Article to port, and each passes to the right of the other. This Article can never apply to one of two ships, (as assumed by " Byng Giraud," in letter of 21st instant,) and can never apply at all, unless it applies to both of " two ships meeting end on, or nearly end on."

If one of two ships is required to act under this Article, they are both required to do so.

An Order in Council has expressly stated that this Article applies only to two steamships, (at night,) " each of which is in such a position as to see both the side lights of the other."

Article 14 applies to two ships under steam, each crossing the path of the other, so as to involve risk of collision.

So long as the courses of the two ships cross, one of the ships will always have her red light exposed to the green light of the other—one is always to the left of the other. And this Article requires the one to the left to “keep out of the way of the other.”

So long as like is exposed to like—*i. e.*, the green light of one ship is exposed to the green light of the other, or the red light of the one ship is exposed to the red light of the other—the ships are “*passing ships*,” and there is no danger of collision.

If each ship sees the red *and* green lights of the other, they are “*meeting end on, or nearly end on.*”

So long as a green light is exposed to a red light, the ships must be “*crossing ships*,” and collision is almost inevitable, unless the one to the left keeps out of the way.

In the issue of the 24th March, a writer (“R. E. Hooppell”) suggests, that the simple revision required is the leaving out from the rules the words “or nearly end on,” as being ambiguous and misleading.

This suggestion was approved by “Bynd Giraud,” in the same journal.

Two sailing ships crossing.

Rule 12. When two sailing ships are crossing, so as to involve risk of collision, if they have the wind on different sides, the ship with the wind on the port side must keep out of the way of the ship with the wind on the starboard side, except when the ship with the wind on the port side is close-hauled, and the other ship free, in which case the latter ship must keep out of the way.¹ But if they have the wind on the same side, or if one of them has the wind aft, the ship which is to windward must keep out of the way of the ship which is to leeward.

Article 12 of *British Regulations*.

¹ Cited and applied in *Dean v. Mark*; The “*Constitution*,” 2 *Moore’s Privy Council Rep.*, (N. S.) 453; 10 *Jurist*, 831; 10 *Law Times Rep.*, (N. S.), 894.

Two ships under steam crossing.

Rule 14.¹ If two ships under steam are crossing, so as to involve risk of collision, the ship which has the other on her own starboard side must keep out of the way of the other.²

¹ Article 14 of *British Regulations*.

Article 13 is superseded by Rule 11.

² The words "shall starboard and stop, and reverse if necessary," have been proposed to be substituted for "shall keep out of the way of the other." *Jenkins' Rule of the Road at Sea*, p. 73.

Sailing ship and ship under steam.

Rule 15. If two ships, one of which is a sailing ship, and the other a steamship, are proceeding in such directions as to involve risk of collision, the steamship must keep out of the way of the sailing ship.

Article 15 of *British Regulations*.

It has been proposed to substitute the following in place of this rule: "A steamship shall keep out of the way of a sailing ship." *Jenkins' Rule of the Road at Sea*, p. 73.

The American rule permits a steamer to go either to the right or the left of a sailing ship, which has the wind free. *The Osprey, Sprague's Decisions*, 245; *Steamer Oregon v. Rocca*, 18 *Howard's U. S. Supreme Ct. Rep.*, 570.

The English statute rule requires her to go to the right. 17 & 18 *Vict.*, c. 104, § 296.

The principle upon which the steamship is liable, even though the sailing ship is culpable, is laid down in *Inman v. Reck*; *The City of Antwerp*, and *The Friedrich*, 37 *Law Jour. Adm.*, 25; 2 *Law Rep. P. C.*, 25.

Ships under steam to slacken speed.

Rule 16. Every steamship, when approaching another ship, so as to involve risk of collision, must slacken her speed, or, if necessary, stop and reverse, and¹ every steamship, when in a fog, must go at a moderate rate of speed.

Article 16 of *British Regulations*.

¹ Alterations proposed omit all but the last clause. *Jenkins' Rule of the Road at Sea*, p. 73.

Ships overtaking other ships.

Rule 17. Every ship overtaking another, must keep out of her way.

From Article 17 of *British Regulations*.

Construction of preceding rules.

Rule 18. Where, by the rules of navigation contained in this Code, one of two ships is to keep out of the way, the other shall keep her course, subject to the qualifications contained in the next rule.

Article 18 of *British Regulations*.

Proviso to save special cases.

Rule 19. In applying the rules of navigation contained in this Code, due regard must be had to all dangers of navigation, and to any special circumstances which may exist in a particular case, rendering a departure from the rules necessary, in order to avoid immediate danger.

Article 19 of British Regulations.

If a ship bound to keep her course under the 18th sailing rule of 1863, justifies her departure from that rule under the 19th rule, she takes upon herself the obligation of showing not only that her departure was, at the time it took place, necessary, in order to avoid immediate danger, but also that the course adopted by her was reasonably calculated to avoid that danger. The *Agra and Elizabeth Jenkins*, *Law Rep.*, 1 *P. U.*, 501; citing *Holt, Rule of the Road*, p. 101; The *George Dean v. The Constitution*, Admiralty Court, 1 Feb., 1865; the *Planet v. The Aura*, Admiralty Court, 7 Dec., 1865.

A departure from a rule or usage is not only justified when a compliance would be dangerous from special circumstances, but becomes a positive duty when such compliance would endanger or injure another vessel, and then a compliance with the rule or usage would be no excuse. *Allen v. Mackay*, *Sprague's Decisions*, 219; The *Vanderbilt*, *Abbott's Adm. Rep.*, 361; The *Friends*, 1 *W. Robinson's Rep.*, 478; The *Commerce*, 3 *Id.*, 287; The *Steamer Oregon v. Rocca*, 18 *Howard's U. S. Sup. Ct. Rep.*, 572; *Crockett v. Newton, Id.*, 583; 2 *Parsons on Contracts*, 313.

No ship under any circumstances to neglect proper precautions.

Rule 20. Nothing in the rules of navigation contained in this Code shall exonerate any ship, or the owner, master, or crew thereof, from the consequences of any neglect to carry lights or signals, or to keep a proper lookout, or of the neglect of any precaution which may be required by the ordinary practice of seamen, or by the special circumstances of the case.

Article 20 of British Regulations.

Alterations proposed (*Jenkins' Rule of the Road at Sea*, p. 74,) omit this and the two preceding rules, and substitute the following:

"Every steamship must carry a compass on the bridge."

Duty of succor.

378. It is the duty of all persons on the high seas to render assistance to ships or persons in distress,

whether from collision or otherwise, so far as it can be done with reasonable safety to themselves.

The *Germania*, 21 *Law Times Rep.* (N. S.) 44.

By 25 & 26 *Vict.*, c. 63, s. 33, in case of collision between two ships, it is the duty of "the person in charge" of each ship to render assistance to the other; and, in case he fails to do so, without reasonable excuse, the collision shall, in absence of proof to the contrary, be deemed to have been caused by his wrongful act.

This principle was applied in *The Queen of the Orwell*, 7 *Law Times*, (N. S.) 839; 11 *Weekly Rep.* 499.

The "person in charge," intended by that section, is the master. *The Queen*; *The Lord John Russell*, *Law Rep.*, 2 *Adm. & Ecc.*, 354.

CHAPTER XXXIII.

COLLISION.

These rules are chiefly from the *Civil Code*, reported for *New York*, p. 115, and the *German General Mercantile Law*. For a discussion on the liability for collision at sea, see *The Transactions of the British National Association for Promotion of Social Science*, 1859, p. 216.

ARTICLE 379. Loss, how apportioned.

380. Faults of navigation.

381. Who liable.

382. Personal liability of wrong-doer.

383. Compulsory pilotage.

Loss, how apportioned.

379. Losses caused to ship, freight,¹ or freightage, by any² collision of two or more ships,³ are to be borne as follows:

1. If either party was exclusively in fault, he must bear his own loss, and compensate the other for any loss he has sustained;⁴

2. If neither was in fault, the loss must be borne by him on whom it falls;⁵

3. If both were in fault, the loss is to be equally divided,⁶ unless it appears that there was a great disparity in fault, in which case the loss must be equitably apportioned; or, unless it appears that both parties were

willfully in fault, in which case the loss must be borne by him on whom it falls ;⁷ or,

4. If it cannot be ascertained where the fault lies, the loss must be equally divided.⁸

¹ The *Narragansett*, *Olcott*, 246 ; *Allen v. Mackay*, *Sprague's Decisions*, 219. The word "freight" is used to designate whatever is borne, as most likely to avoid the use of the same word in two senses, freight being in frequent use for the thing carried, as well as for the price of carriage.

² These are applicable, whether one or both of the ships are sailing, drifting, anchored, or fastened to the shore. *German Mercantile Law*, § 738.

³ The owner of a vessel solely in fault is answerable for damages caused by a second vessel being driven by the collision against a third. *Germ. Merc. Law*, § 741.

⁴ The *Scioto*, *Daveis' Rep.*, 359 ; The *Woodrop-Sims*, 2 *Dods.*, 83 ; The *Sappho*, 9 *Jurist*, 560 ; *Reeves v. The Constitution*, *Gilpin's Rep.*, 579. Where repairs are practicable, the damages awarded must be sufficient to restore the injured vessel to the condition in which she was before the collision, without any deduction from new for old. The *Baltimore*, 8 *Wallace's U. S. Sup. Ct. Rep.*, 377.

⁵ The *Woodrop-Sims*, *supra* ; *Stainback v. Rae*, 14 *Howard's U. S. Sup. Ct. Rep.*, 532 ; The *Itinerant*, 2 *W. Robinson's Rep.*, 236 ; The *Celt*, 3 *Haggard's Adm.*, 328, note. An inevitable accident is defined in The *Virgil*, (2 *Robinson's Rep.*, 201,) to be, "that which the party charged with the "offense could not possibly prevent by the exercise of ordinary care, caution, and maritime skill." The *Uhla*, 19 *Law Times Rep.*, (*N. S.*) 89.

⁶ This is the rule in admiralty courts. *Cushing v. The John Fraser*, 21 *Howard's U. S. Sup. Ct. Rep.*, 184 ; *Rogers v. The St. Charles*, 19 *Id.*, 108 ; The *Catherine v. Dickinson*, 17 *Id.*, 177 ; *Vaux v. Sheffer*, 8 *Moore's Privy Council Rep.*, 75. It is otherwise at common law. *Dorrell v. Gen. St. N. Co.*, 5 *Ellis & Blackburn's Rep.*, 195 ; *Gen. St. N. Co. v. Mann*, 14 *Common Bench Rep.*, 127. See *Barnes v. Cole*, 21 *Wendell's (New York) Rep.*, 188.

⁷ In this case, the court will not interfere in favor of either party. *Sturgis v. Clough*, 21 *Howard's U. S. Sup. Ct. Rep.*, 451.

⁸ The *Scioto*, *Daveis' Rep.*, 359 ; The *Catherine of Dover*, 2 *Haggard's Adm.*, 145 ; *Lucas v. The Swann*, 6 *McLean's U. S. Circ. Ct. Rep.*, 282 ; The *Nautilus*, *Ware's Rep.*, 529.

Faults of navigation.

380. Collisions caused by the want of compliance, on the part of any ship, with the rules of Chapter XXXII., on NAVIGATION, whatever may be the excuse for such want of compliance,¹ and collisions to which

a ship not lawfully engaged in navigation is a party,² are to be deemed caused by the fault of such ship.

¹ The Emperor v. The Zephyr, *Holt's Rule of the Road*, p. 24; 12 *Weekly Rep.*, 890, *Adm.*; The Pyrus v. The Smaler, *Holt's Rule of the Road*, p. 40.

Compare, however, Kissam v. The Albert, 11 *Am. Law Reporter*, (N. S.) 41.

² The Maverick, *Sprague's Decisions*, 23.

It may perhaps be questioned whether this should be applied to ships without national papers. See Article 69.

Who liable.

381. The party in fault, within the meaning of article 379, is the owner of the ship, defects in which, or in the appurtenances or management of which, or the acts or omissions of inmates of which, contribute to produce the collision.

The ship¹ itself, and such freightage as is due,² are also liable, but neither the freight nor the owners thereof.³

¹ The Ruby Queen, *Lushington's Rep.*, 266.

A *bona fide* transfer without notice does not divest the injured party's lien, if he is not guilty of laches in enforcing it. *Edwards v. The Stockton*, *Crabbe's Rep.*, 580; *The Bold Buccleugh*, 3 *W. Robinson's Rep.*, 220; *Harmer v. Bell*, 7 *Moore's Privy Council Rep.*, 267. But this lien, like every admiralty lien, may be lost by delay to enforce it. *The Admiral*, 18 *Law Reporter*, 91.

² *German General Mercantile Law*, Part VIII., Art. II., § 736; *The Victor*, *Lushington's Rep.*, 72.

³ Freightage on cargo due to the ship owner is liable; deductions, as by charter, from gross freight, and reasonable deductions for non-delivery at port of destination, being allowed. *The Leo*, *Lushington's Rep.*, 444; 31 *Law Journal, Adm.*, 78; 6 *Law Times*, (N. S.), 58.

Personal liability of wrong-doer.

382. Article 379 does not affect the personal liability of the inmate of any ship for the consequences of his own fault.

German General Mercantile Law, Part VIII., Art. II., § 736; and see *Hale v. Washington Insurance Company*, 2 *Story's U. S. Circuit Ct. Rep.*, 176; *The Wild Ranger*, 32 *Law Journal, Adm.*, 49; 7 *Law Times*, (N. S.), 725; 9 *Jurist*, (N. S.), 134.

Compulsory pilotage.

383. When the ship is in charge of a pilot, where

pilotage is compulsory, and the crew have performed the duties required of them,¹ the owner and ship are not responsible for the collision if caused by the pilot;² but it is the duty of the State by which the employment of the pilot was compelled, to indemnify the parties injured.³

¹ In *The Minna*, *Law Rep.*, 2 *Adm. & Ecc.* 97, the owners of a wrong-doing ship having, by compulsion of law, a pilot on board, were held not to be exempt, under the 388th section of the Merchant Shipping Act, 1854, from liability for damages, where a neglect of duty on the part of the master conduced to the collision.

² *German General Mercantile Law*, Part VIII., § 740. Having a pilot on board is not an exoneration. *The Carolus*, 2 *Curtis' U. S. Circuit Ct. Rep.*, 69; *Denison v. Seymour*, 9 *Wendell's (New York) Rep.*, 9.

³ This qualification is added, as being a reasonable condition to annex to compulsory pilotage.

The expediency of the law of compulsory pilotage, so far as it exempts the owner of the wrong-doing vessel from all liability, was considered and questioned in *The Halley*, *Law Rep.*, 2 *Adm. & Ecc.*, 3, where the plaintiffs, owners of a foreign vessel, claimed damages for a collision between their vessel and an English ship, in Belgian waters. The defendants, the owners of the English ship, pleaded that, by the Belgian laws, pilotage was compulsory in the place where the collision occurred. It was held, that the plaintiffs were entitled to plead, in reply, that, by the same laws, the owner of the wrong-doing vessel, although compelled to take a pilot on board, continued liable for the damages.

CHAPTER XXXIV.

GENERAL AVERAGE.

ARTICLE 384. Jettison.

385. Order of jettison.

386. By whom made.

387. General average.

388. Loss, how borne.

389. Loss, how adjusted.

390. Consular power.

391. Jettison of deck cargo.

392. Damage by water and breakage.

393. Extinguishing fire on shipboard.

394. Cutting away wreck.

- ARTICLE 395. Voluntary stranding.
 396. Carrying a press of sail.
 397. Port of refuge expenses.
 398. Wages and maintenance of crew in port
 of refuge.
 399. Damage to cargo in discharging
 400, 401. Contributory values.

Jettison.

384. A carrier by water may, when in case of extreme peril it is necessary for the physical safety of the ship or cargo,¹ throw overboard, or otherwise sacrifice, any or all of the cargo or appurtenances of the ship. Throwing property overboard for such purpose is called jettison.

Lawrence v. Minturn, 17 *Howard's U. S. Sup. Ct. Rep.*, 100.

This and several of the following Articles are, substantially, from the *Civil Code, reported for New York*, pp. 336, 337.

"To constitute a case of general average," says Judge MARVIN, (*Report on Int. Gen. Ave.*) "three things must concur: 1st. There must be a common danger impending, in which ship, freight, and cargo participate. 2nd. There must be a sacrifice of a portion of the ship or cargo, or extraordinary expenses incurred for the purpose of avoiding that common peril. 3rd. The attempt to avoid the peril must be successful."

"The English and French systems, as administered by the average adjusters, in the absence of express decisions of the courts on the question, accord best with the idea, that the motive for making the sacrifice or incurring the expense *must* be the common *physical* safety of the property; and this attained, the general average charges cease, although the ship may not have completed the voyage. The American system accords best with the idea, that the motive *may* be either the physical safety of the property, or the common benefit; *i. e.*, the arrival of the ship and cargo in company at the port of delivery. The English and French systems recognize the idea, that the community of interest is interrupted or suspended by the landing of the cargo in a place of safety, however remote from the port of destination; whereas the American system recognizes the community of interest as continuing, uninterruptedly, until the termination of the adventure."

Order of jettison.

385. A jettison must begin with the most bulky and least valuable articles, so far as may be practicable.

Code de Commerce, Art. 411.

By whom made.

386. A jettison can be made only by authority of

the master of a ship, except in case of his disability, or of an overruling necessity, when it may be made by any other person.

³ *Kent's Commentaries*, 233.

General average.

387. Except as hereinafter provided, all losses caused by jettison, and all damage done to ship or freight,¹ or both, by the master, or by his orders, when necessary for the physical safety of the ship or cargo,² as also the consequential damage resulting therefrom, and the expenses incurred for the same purpose, are general average.³

¹ In addition to exceptions mentioned in the following Articles, the *German Mercantile Law* excepts goods not represented by bill of lading or manifest, and money and valuables of which the master was not notified. § 710, sub. 2, 3.

² As to whether this should be extended to sacrifices for the common benefit in other cases, see note to Article 384.

³ "The question has been raised whether general average contribution is due when the danger originates in the mismanagement or fault of the master or owner of the cargo, or a third person. Some Codes provide, and among them the new German Code, that contribution shall in such case take place, but the party at fault shall not receive anything, but shall be liable to reimburse the other contributors." *Marsin. Report on Int. Gen. Ave.*

Loss, how borne.

388. A general average loss,¹ when lawfully made, must be borne in due proportion by all that part of the ship, appurtenances, freightage and freight, for the benefit of which the sacrifice was made, and which was really saved,² as well as by the owner of the thing sacrificed.³

¹ By the *German General Mercantile Law*, § 707, a claim for damage belonging to general average is only so far set aside by a particular average subsequently affecting the damaged article, (whether it be again damaged or totally destroyed,) as it is proved that the latter misfortune not only was in no way connected with the former, but that it would also have resulted in the former damage if this had not already been occasioned.

If, however, before the occurrence of the latter misfortune, steps should already have been taken to reinstate the damaged article, then the claim

for reimbursement holds good as far as such steps are concerned. See *Barnard v. Adams*, 10 *Howard's U. S. Sup. Ct. Rep.*, 270, 303.

² *German General Mercantile Law*, § 705. It is added there in §§ 706 and 7, that the obligation to contribute to general average from an article saved, is not annulled because the article is subject subsequently to particular average, unless it is totally destroyed.

That Code also provides that ammunition and provisions of the ship, wages and effects of crew, and baggage of passengers do not contribute. § 725.

³ *Lee v. Grinnell*, 5 *Duer's (New York) Rep.*, 431; *Simonds v. White*, 2 *Barnewall & Cresswell's Rep.*, 805. But by the *German Mercantile Law*, an average loss does not in general constitute a personal liability. § 728.

Loss, how adjusted.

389. The proportions in which a general average loss is to be borne must be ascertained by an adjustment, in which the owner of each separate interest is to be charged with such proportion of the value of the thing lost as the value of his part of the property affected bears to the value of the whole. But an adjustment made at the end of the voyage, if valid there, is valid everywhere.¹

³ *Kent's Commentaries*, 232.

¹ *Simonds v. White*, 2 *Barnewall & Cresswell's Rep.*, 805.

The *German General Mercantile Law* (§§ 711, &c.) contains provisions regulating the adjustment in detail.

Consular power.

390. A nation may give to its consuls power to adjust averages and regulate repairs, in the case of ships of such nation coming within the country of the consul's residence, when such acts are demanded by a party concerned who has no domicile in the country, and there is no agreement between the parties for a different mode of adjustment, or regulation of repairs.

But a consular adjustment, or average, or regulation of repairs, made under this article, does not bind any person who is either domiciled in the country, or a member of a third nation, unless he consents to the submission to the consul.

Suggested by the treaty between the United States and France, Feb. 23, 1853, Art. X., (10) *U. S. Stat. at L.*, 998,) which provides that consuls shall

receive the declarations, protests, and reports of all captains of vessels of their nation, in reference to injuries [*avaries*] experienced at sea. They shall examine and note the storage. . . . In the absence of a stipulation to the contrary between owners, freighters, and insurers, they shall be charged with the repairs [*regler ces avaries.*] . . . If inhabitants of the country or members of a third nation are interested, and the parties cannot agree, the local authorities shall decide.

To the same effect is the provision in the treaty between the United States and

Belgium, Dec. 5, 1868, Art. XIII., *U. S. Cons. Reg.*, (1870,) ¶ 511.

Italy, Feb. 8, 1868, " XIV., 15 *U. S. Stat. at L.*, (Tr.) 185.

And as to consular power to settle damage to effects and merchandise shipped in such vessels, see treaty between the United States and

New Granada, May 4, 1850, Art. III., 10 *U. S. Stat. at L.*, 900.

Jettison of deck cargo.

391. A jettison of timber or deals, or any other description of wood freight, carried on the deck of a ship, in pursuance of a general custom of the trade in which the ship is then engaged, must be made good as general average, in like manner as if such freight had been jettisoned from below deck.

No jettison of deck freight, other than timber or deals, or other wood so carried, is to be made good as general average.¹

Every structure, other than mast, spars and rigging, not built in with the frame of the ship, below deck, is to be considered a part of the deck of the ship.

This and the ten following articles are from the Report prepared by Judge WILLIAM MARVIN, in the Proceedings of the International Congress held at York, England, September, 1864, for the purpose of promoting a uniformity in the mode of adjusting general averages in the different countries of the world.

¹ The American rule is, that the owner of things stored on deck, in case of their jettison, is entitled to the benefit of a general average contribution *only in case it is usual* to stow such things on deck upon such a voyage. *Lawrence v. Minturn*, 17 *Howard's U. S. Sup. Ct. Rep.*, 100; *Sayward v. Stevens*, 3 *Gray's Rep.*, 97; *Smith v. Wright*, 1 *Caines' Rep.*, 43; *Lenox v. United Ins. Co.*, 3 *Johnson's Cases*, (*New York*), 178; *Harris v. Moody*, 4 *Bosworth's (New York) Rep.*, 210; *Gould v. Oliver*, 4 *Bingham's Rep.*, (*N. C.*) 134; *S. C.*, 2 *Manning & Granger's Rep.*, 208; *Milward v. Hibbert*, 3 *Queen's Bench Rep.*, 120.

The *German General Mercantile Law*, (§ 710,) recognizes, as an exception, deck cargo in the coasting trade, when allowed by law.

Damage by water and breakage.

392. Damage done by water which unavoidably goes down a ship's hatches opened, or other opening made for the purpose of a jettison, must be made good as general average, in case the loss by jettison is so made good.¹

Damage done by breakage and chafing, or otherwise, from derangement of stowage consequent upon a jettison, must be made good as general average.²

¹ Such damage is considered as an accessory of the jettison, or the immediate direct consequence of making the jettison. *German Code*, § 708; *French Code*, § 400; *Holland Code*, § 699; *Baily*, 171; 13 *Peters' U. S. Sup. Ct. Rep.*, 343; *Phillips*, § 1286.

² This damage is rejected by the average adjusters in England and Belgium.

To similar effect, however, is the consular convention between France and

Portugal, July 11, 1866, Art. XV., 9 *De Clercq*, 582.

Austria, Dec. 11, 1866, " XIII., 9 *Id.*, 669.

Brazil, Dec. 10, 1860, " X., 8 *Id.*, 153.

Treaty between France and

Peru, Mar. 9, 1861, Art. XXXII., 8 *De Clercq*, 193.

Convention between the United States and

Italy, Feb. 8, 1868, Art. XIV., 15 *U. S. Stat. at L.*, (Tr.), 185.

Extinguishing fire on shipboard.

393. Damage done to a ship and freight, or either of them, by water or otherwise, in extinguishing a fire on board the ship, is the subject of general average.

This damage is rejected from general average in England, and admitted in the United States, Holland and Belgium. *Baily*, 81; 5 *Duer's (New York) Rep.*, 310; 25 *Pennsylvania Rep.*, 366.

Cutting away wreck.

394. Loss caused by cutting away the wreck or remains of spars, or of other things which have previously been carried away by sea peril, is not to be made good as general average.

This damage is not allowed in general average in England or the United States. It is allowed in France. So by the *German Mercantile Law*, § 708.

In Belgium, in practice, one-third the value is considered as general average, one-third particular, and one-third new for old.

In Holland, the value of the wreck, as such, is contributed for.

Voluntary stranding.

395. When a ship is intentionally run on shore because she is sinking, or driving on shore or rocks, the damage caused to the ship, the freight, and the freightage, or any of them, by such intentional running on shore, is not to be made good by general average.

The question, says *Marrin*, (*Report on Int. Gen. Ave.*), has never been decided by the courts of England, but the uniform practice of the average adjuster is to disallow this loss or damage in general average. *Baily*, 75.

In France and Spain, it is allowed in general average, provided the ship is got off with her cargo on board, or if, the cargo having been landed, she takes her cargo again on board, and proceeds to a port of refuge, or resumes her voyage. *M. Cauvet*, §§ 345-7.

But if the ship is lost, there is no contribution. The Marine Ordinance of Louis XIV. declares that if the jettison does not save the ship, there is no ground for contribution. *Valin*, Liv. 3, Tit. 8; *Du jet et de la contribution*; *Spanish Code*, Art. 933.

The new *German Code*, § 708, declares that damages caused by a voluntary stranding, in order to avoid capture or sinking, are general average; but if the stranding was in order to avoid *sinking*, and the ship is not got off, or, after being got off, is found incapable of repair, the damage is not general average.

The Maritime Codes of Holland, Norway, Sweden, Denmark, and the United States, all make damage caused by voluntary stranding general average, and this without regard to the question whether the ship is subsequently refloated or not. *Adams v. Barnard*, 10 *Howard's U. S. Sup. Ct. Rep.*, 270; *Columbian Ins. Co. v. Ashby*, 13 *Peters' U. S. Sup. Ct. Rep.*, 331.

Carrying a press of sail.

396. Damage occasioned to a ship or freight, by carrying a press of sail, is not to be made good by general average.

Covington v. Roberts, 2 *Bosanquet & Puller's Rep.*, 378; *Figuet*, 390, 394; *Cauvet*, § 352. The *German Mercantile Law* adds, (§ 709,) "when the press of sail was carried to avoid stranding or capture."

Port of refuge expenses.

397. When a ship shall have entered a port of refuge, under such circumstances that the expenses of entering the port are admissible for general average, and when she shall have sailed thence, with her original freight, or a part of it, the corresponding expenses of leaving

the port shall likewise be so admitted for general average; and whenever the cost of discharging freight at such port is admissible for general average, the cost of reloading and stowing such freight on board the ship, together with all storage charges on such freight, are likewise admissible: except that any portion of the freight left at such port of refuge, on account of its being unfit to be carried forward, or on account of the unfitness or inability of the ship to carry it, is not liable to contribute to such general average.

Wages and maintenance of crew in port of refuge.

398. When a ship shall have entered a port of refuge, under the circumstances mentioned in the last article, the wages and cost of maintenance of the master and mariners, from the time of entering the port until the ship shall have been made ready to proceed upon her voyage, are to be made good by general average; except that any portion of the freight left at such port of refuge, on account of its being unfit to be carried forward, or on account of the unfitness or inability of the ship to carry it, is not liable to contribute to such general average.

The conflict of authority on the question of port of refuge expenses, is fully discussed in *Judge Marvin's Report*, p. 30; citing *Hopkins*, 45; *Baily*, 179-80; *Hall v. Jansen*, 4 *Ellis & Blackburn's Rep.*, 500; *Journal du Palais*, vol. 72, p. 9; vol. 74, p. 613; vol. 75, pp. 189, 549; *Cauvet*, 362, 372, 374; *Dalloz, Jurisp., Gen.*, 1864, p. 70; *Antwerp Customs*, by *Engles and Van Pebourgh*; *Guide Generalis des Ass. Mar.*, p. 374; *Code de Com. of Spain*; *Concordance outre les Codes*, by *St. Joseph*; *Manuel de l'Assuré*, by *Morel*; *Nelson v. Belmont*, 21 *New York Rep.*, 36; *McAndrews v. Thatcher*, 3 *Wallace's U. S. Sup. Ct. Rep.*, 347; *Job v. Langton*, 6 *Ellis & Blackburn's Rep.*, 779.

Damage to cargo in discharging.

399. Damage done to freight by discharging it at a port of refuge, is not admissible for general average, if such freight shall have been discharged at the place and in the manner customary at that port with ships not in distress.

In practice, this damage is not allowed in general average by the Eng-

lish adjusters, but is by the American. 1 *Wallace, Jr.'s U. S. Circ. Ct. Rep.*, 355. And see *Cauvet*, § 372.

Besides the foregoing classes of general average losses, the *German Mercantile Law* includes :

Hire of lighters, and damage by reshipping in lightening the ship ; § 708, sub. 2.

Ammunition, and expenses of wounded and dead, and the compensations, on a defense against enemies and pirates ; sub. 5.

Redemption from capture, and maintenance, and ransom of hostages ; sub. 6.

Losses and expenses of obtaining money during the voyage for payment of general average, and expenses of apportionment ; sub. 7.

Contributory values.

400. The contribution to a general average must be made upon the actual values of the property at the termination of the adventure, to which must be added the amount made good by general average for property sacrificed ; deduction being made from the ship-owner's freightage, and passage-money at risk, of two-fifths of such freightage, in lieu of crew's wages, port charges, and all other deductions ; deduction being also made from the value of the property, of all charges incurred in respect thereof, subsequently to the arising of the claim to general average.

The provision on this subject in the *Civil Code*, reported for *New York*, (p. 337,) is as follows :

In estimating values for the purpose of a general average, the ship and appurtenances must be valued as at the end of the voyage, the freightage at one-half the amount due on delivery, and the cargo as at the time and place of its discharge ; adding, in each case, the amount made good by contribution. See 3 *Kent's Commentaries*, 242 ; 5 *Duer's (New York) Rep.*, 429 ; 1 *Caines' Rep.*, 373 ; 2 *Sergeant & Rawle's (Pennsylvania) Rep.*, 229.

The same.

401. In every case in which a sacrifice of freight is made good by general average, the loss of freightage, if any, which is caused by such loss of freight, is likewise to be made good.

The principle of a limitation of the liability of the ship-owner to the value of the ship and freight, for the acts and contracts of the master, is incorporated into the system of commercial law of France, Belgium, Holland, the German States, and probably every country on the continent of Europe. *French Code*, 216 ; *Holland Code*, 321 ; *German Code*, 452.

And, whether the general average consists of sacrifices to be made good, or expenses to be reimbursed, the contributory values are the same, and are the values *saved* at the termination of the adventure. In both cases, if there is no salvage, there is no contribution. *Cauvet*, § 418.

But the English and American courts do not limit the liability of the ship-owner to the value of the ship and freight. 7 *Johnson's (New York) Rep.*, 413; 9 *Massachusetts Rep.*, 548; 14 *Id.*, 66; 2 *Phillips*, § 1374; 2 *Arnould*, 344; 5 *Common Bench Rep.*, 330.

And in the law of these countries, a distinction obtains, in certain cases, between *sacrifices* and *expenditures*, in fixing the contributory values in the adjustment of general averages. As to losses arising out of *sacrifices*, the law is the same as in the other countries above named. But in adjusting losses arising from *expenditures*, not secured by bottomry or respondentia, the value of the property at the time the expenses are incurred, is taken as the true contributory value, and contribution may be exacted in this case, though nothing is ultimately saved. 2 *Phillips*, § 1374; 2 *Arnould*, §§ 344-349; 9 *Massachusetts Rep.*, 548; *Phillips' Bencke*, 241.

CHAPTER XXXV.

SALVAGE.

ARTICLE 402. When allowed.

403. Officers, seamen and pilots.

404. Forfeiture of salvage.

405. Special contract.

406. Amount, how fixed.

407. Apportionment between several salvors.

When allowed.

402. Except as provided in the next article, any person¹ who rescues, or contributes to rescue² from danger³ a ship, her appurtenances, or cargo, or other property, against which a court of admiralty may give a remedy;⁴ or who rescues, or contributes to rescue the lives of the persons belonging to such ship,⁵ is entitled to a reasonable compensation therefor, to be paid out of the property saved.

Such compensation is termed *salvage*.⁷

¹ It has been a mooted question in American courts, whether salvage

should be awarded to wrecking companies organized, and employing paid servants at regular wages, to rescue wrecks and vessels in distress. 1 *Abbott's Jurisdiction & Practice of U. S. Courts*, 583. But it seems to accord with sound public policy to recognize such claims. The *Camanche*, 8 *Wallace's U. S. Sup. Ct. Rep.*, 448. Therefore, no restriction is inserted here. The apportionment of the sum awarded between the company and their servants, in such cases, must depend on their contract.

² An abandoned attempt does not entitle the maker to share in the salvage of a subsequent successful attempt by others. Otherwise, where successive assistances are rendered by different persons, all contributing to the rescue. The *Island City*, 1 *Black's U. S. Sup. Ct. Rep.*, 121.

Attempted services performed under an agreement of salvage, are entitled to be rewarded when the performance of them is rendered impossible by the act of God. The *Undaunted*, 29 *Law Journal, Adm.*, 176; *Lushington's Rep.*, 90.

³ The danger may be of damages of the seas, fire, pirates, or enemies. *Jones on Salvage*, p. 1.

The German law says, in case of "distress" or "danger." The American doctrine is, that there must be danger beyond the ordinary exposures, and requiring more than the ordinary services. Certainty of destruction without the service is not essential. 1 *Abbott's Jurisdiction & Practice of U. S. Courts*, 574. See, also, The *Charlotte*, 3 *W. Robinson's Rep.*, 71.

Even though a vessel has sustained no real damage, yet if she is in a position of reasonable apprehension of actual danger, assistance rendered to her under such circumstances will be of the nature of a salvage service. *Jones on Salvage*, p. 3; The *Aztecs*, 21 *Law Times, (N. S.)* 797. See, also, The *Raikes*, 1 *Haggard's Adm.*, 246; The *Phantom*, *Law Rep.*, 1 *Adm. & Ecc.*, 58; and The *Joseph C. Griggs*, 1 *Benedict's Adm.*, 80.

It would be equally a salvage service, whether it were rendered at sea, or upon property wrecked at sea, but then upon land. *Stephens v. Bales of Cotton*, *Bee*, 170.

⁴ A Raft of Spars, *Abbott's Adm. Rep.*, 485; and see *Tome v. Dubois*, 6 *Wallace's U. S. Supreme Court Rep.*, 548.

Valuable papers, &c., and life are not the subjects of salvage. The *Emblem*, *Daveis' Rep.*, 61; The *Mulhouse*, 12 *American Law Rep., (N. S.)* 276.

The principle seems to be, that salvage may be allowed upon any description of property found in peril at sea, which is of such a nature that it might be the specific subject of proceedings in admiralty as a means of paying the amount awarded. The remedy, however, is personal, as well as against the specific thing.

⁵ The English *Merchant Shipping Act*, 1854. See, also, The *Eastern Monarch*, *Lushington's Rep.*, 81; The *Thomas Fielden*, 32 *Law Jour., Ad.*, 61. See, however, note 4, above.

Where there is a joint salvage, a vessel saving life as well as property has been awarded a higher remuneration than one saving property alone. The *Clarisse*, *Swabey's Rep.*, 129. See, also, The *Coromandel*, *Id.*, 205; The *Bartley*, *Id.*, 198; The *Alma*, *Lushington's Rep.*, 378.

The owners of the cargo must bear their proportion of salvage awarded for saving the lives of passengers on board the vessel; and it seems their liability in this respect is not affected by the fact that the efforts of the salvors did not contribute to the safety of the cargo. *The Fusileer*, 34 *Law Journ., Ad.*, 25.

⁶ The *German Code* further provides, (§ 753,) that "with respect to the salvage and assistance expenses, which shall be understood to include the amount awarded for such salvage and assistance, the creditor has a lien on the salvaged or preserved articles, and with respect to the salvaged, may detain them until security for the amount has been given." . . .

(§ 754.) "The master may not deliver the goods, either wholly or in part, until the creditor has been paid, or has received security; otherwise, he makes himself personally liable to the creditor, so far as the latter's claim could have been satisfied out of the delivered goods, at the time of their delivery." . . .

(§ 755.) "Salvage and rendering of assistance do not of themselves impose a personal responsibility for payment of salvage and assistance expenses. But the receiver of the goods, when it is known to him at the time he received them that the same were liable for salvage or assistance expenses, becomes personally liable for such expenses," under certain restrictions.

⁷ The German law makes a distinction between salvage, which it only allows "when, in case of distress, a ship or its cargo, being no longer under the control of the crew, or having been abandoned by the same, are taken charge of, either wholly or in part, by third parties, and brought into safety;" and, what is called a claim for assistance, which is allowed "when, in any other case than the above, a ship or its cargo is rescued from a state of distress by the help of third parties."

Officers, seamen and pilots.

403. Officers and seamen of the ship concerned, or of a public ship of the nation of the ship concerned,¹ are not entitled to salvage, except in case of services rendered after being discharged from the obligations of their contract.²

A pilot not belonging to the ship³ concerned may claim salvage for services not part of his official duties as pilot.⁴

¹ The English rule is now understood to be, that salvage is not allowed to a national vessel for recapture of another vessel employed in the public service; and this rests upon the ground that the service is in the direct line of duty of a national [public] vessel; but the United States allow salvage in such cases. 12 *Opinions of U. S. Attorneys-General*, 289.

It has been held in the United States, that the officers and crew of a foreign war vessel are entitled to claim as salvors. *Robson v. The Huntress*, 2 *Wallace Jr.'s U. S. Circ. Ct. Rep.*, 59.

² If the contract between the owners and the crew be terminated by a *bona fide* and final abandonment of the vessel, the crew may become entitled to salvage reward for the services they subsequently render towards the preservation of the ship or cargo. *Jones on Salvage*, p. 19; *The Florence*, 16 *Jurist*, 572; *The Warrior*, 1 *Lushington's Rep.*, 476; *The Neptune*, 1 *Haggard's Rep.*, 227-237; *The Vrede*, 30 *Law Journal, Adm.*, 209.

Capture by a belligerent dissolves or suspends the connection between the seamen and their vessel; and if they rescue the vessel from the enemy, they are entitled to salvage. *Jones on Salvage*, p. 21; *The Two Friends*, 1 *C. Rob.*, 271. See, also, *Phillips v. McCall*, 4 *Washington's U. S. Circ. Ct. Rep.*, 141; *Williams v. Suffolk Ins. Co.*, 3 *Sumner's U. S. Circ. Ct. Rep.*, 270.

The American doctrine recognizes another qualification, namely, that services entirely above the duties of a seaman, rendered in a spirit of gallantry, may be compensated upon salvage principles. *The John Taylor*, *Newberry's Adm. Rep.*, 341; *The John Perkins*, 9 *American Law Rep.*, (N. S.) 490; *The Dawn*, *Dacey's Rep.*, 121, 142; *Mary Hale*, *Marrin on Salvage*, 161.

³ *Hobart v. Drogan*, 10 *Peters' U. S. Sup. Ct. Rep.*, 108; *Hand v. The Elvira*, *Gilpin's Rep.*, 60.

The laws of most of the United States make it a part of the duty of a pilot to assist vessels in distress; and, in some instances, give the rate of extra compensation to be awarded—their services being considered as extra-pilotage services, and not as salvage. 2 *Parsons on Shipping*, 271.

⁴ *The Wave v. Hyer*, 2 *Paine's U. S. Circ. Ct. Rep.*, 131.

Forfeiture of salvage.

404. No person has a claim for salvage:

1. Who unnecessarily forced the acceptance of his services;¹ or,

2. Who has not immediately notified to the master or owner, if possible, and to the local authorities, the property saved;² or,

3. Who has embezzled or connived at the embezzlement of any part, however small, of the property saved.³

The law upon this point is laid down by Sir JOHN COLERIDGE, in *The Atlas*, 1 *Lushington's Rep.*, 518, 528: Where "success is finally obtained, no mere mistake or error of judgment in the manner of procuring it—no misconduct short of that which is willful, and may be considered criminal, proved beyond a reasonable doubt by the owners resisting the claim—will work an entire forfeiture of salvage. Mistake or misconduct other than criminal, which diminishes the value of the property saved, or occasions expense to the owners, are properly considered in the amount of compensation to be awarded." See *Jones on Salvage*, ch. VII.

Whoever the salvors may be, whether licensed wreckers or not, they are not only bound to be scrupulously honest themselves, but, whilst the property is in their custody, they are expected to employ every reasonable degree of diligence to guard it from plunder by others; and any negligence in this respect will affect the amount of their remuneration. The John Perkins, 19 *American Law Rep.*, 490.

The misconduct of any individual salvor will work a forfeiture of all compensation for his share of the service. The Waterloo, 1 *Blutchford & Howland's Rep.*, 114; The Blaireau, 2 *Cranch's U. S. Sup. Ct. Rep.*, 240.

¹ For instance, a second party of salvors, who wrongfully interfere with the first party. The Blenden Hall, 1 *Dods.*, 414; The Fleece, 3 *W. Robinson's Rep.*, 278.

² *German Law*, § 752.

³ The Island City, 1 *Black's U. S. Sup. Ct. Rep.*, 121; Sch. Dove, 1 *Gallison's U. S. Circ. Ct. Rep.*, 585; The Bello Corrunes, 6 *Wheaton's U. S. Sup. Ct. Rep.*, 152.

Parsons suggests that positive and material falsehood should be regarded as an "embezzlement of the truth," and should work a forfeiture in the same way and to the same extent as an embezzlement of the property. *Law of Contracts*, title *Shipping*, vol. 2, p. 322.

Special contract.

405. When during the danger a contract has been made in good faith¹ respecting the amount of the salvage, such contract must regulate the amount, unless excessive;² in which case, it may be reduced to such amount as is proved to be reasonable.³

¹ The Theodore, *Seabury's Rep.*, 351; The Helen & George, *Id.*, 368; The Arthur, 6 *Law Times*, (N. S.) 556.

² *Bondies v. Sherwood*, 22 *Howard's U. S. Supreme Court Rep.*, 214

³ *A. D. Patchin*, 1 *Blutchford's U. S. Circ. Ct. Rep.*, 414; *Eads v. The H. D. Bacon*, 1 *Newberry's Ann. Rep.*, 274.

Amount, how fixed.

406. The amount awarded for salvage must be fixed, in the discretion of the court, in each case, as an adequate reward, not only for the work done, and expenses incurred, but the zeal shown, the risks run, and the value of that which was saved.

It does not include, however, the costs and fees of the legal authorities, the duties and charges to which the articles saved may be liable, or the expenses of storing, preserving, valuing, or disposing of the same.

It can in no case exceed one-half the value of that which was saved.¹

German Law, §§ 744-748.

By Article 89, salvage in the case of piracy is restricted to one-fourth.

¹ A moiety of the value of the vessel and cargo, in a case of the salvage of a derelict, was formerly the amount awarded, but the maritime courts now give only such amount as is fit and proper with reference to all the circumstances of the case, including the value of the property saved, and the risk to the property of the salvors. *Kirby v. The Owners of The Scindia*, *Law Rep.*, 1 P. C., 241.

Apportionment between several salvors.

407. Where several persons have taken part in the salvage services, the amount awarded must be divided among them in proportion to the service each may have rendered, personally or with his property, or, in case the proportion can not be determined, then according to the number who are to participate.

Those who in the same casualty devoted themselves to the saving of human life, are entitled to participate equally with the others.

German Law, § 750.

The next section of that law provides that "when the ship or its cargo is either wholly or in part salvaged or preserved by another ship, then the amount awarded for salvage or assistance is divided between the owner, the master, and the rest of the crew of the other ship, unless it shall have been otherwise specially agreed between them, in such proportion that the owner shall take one-half, the master one-quarter, and the rest of the crew the other one-quarter. Among the latter the amount shall be divided in proportion to the pay to which each is entitled, or to which, according to his rank, he is entitled."

TITLE XII.

IMPOSTS.

The provisions of this Title are suggested by the provisions usual in commercial treaties between the principal commercial Powers. A number of the later treaties entered into by France, Great Britain, or the United States, are specially referred to under the Articles. These citations might be extended to earlier or less important treaties. In the British Parliamentary Papers, 1866, *Accounts & Papers*, vol. LXXVI., (38,) is a return showing the then existing commercial treaties of Great Britain, and indicating which of them establish reciprocity, which contain the most favored nation clause, and which regulate or provide for an equalization of shipping dues.

- ARTICLE 408. Equality in foreign commerce and navigation.
- 409. No unfavorable discriminations on account of national character or origin.
 - 410. Restrictions on examination of cargo and charges.
 - 411. Ships exempt from tonnage dues.
 - 412. What acts not to be considered acts of commerce.
 - 413. Computation of tonnage.
 - 414. Exception as to fisheries, coasting trade and internal navigation.
 - 415. Commercial travellers.
 - 416. Duty on samples.

Equality in foreign commerce and navigation.

408. There shall be maintained between the territories¹ of all the nations reciprocal liberty of commerce and navigation to all persons and ships bearing the character of any of the nations.² And, except as provided in article 414, whatever traffics allowed by any nation to its domestic ships, or to those of any other nation, shall be allowed, upon the same terms, to the vessels of all the other nations.³

¹ The treaty between the United States and the Netherlands, Aug. 26, 1852, Art. II., (10 *U. S. Stat. at L.*, 983,) expressly extends the rule of reci-

procuity in relation to the flags of the two nations, to the colonies. So does that between Great Britain and Prussia, Aug. 16, 1865, Art. II., (*Accounts & Papers*, 1866, vol. LXXVI., 38.)

² Treaty between the United States and

The Two Sicilies, Oct. 1, 1855, Arts. VI., VIII., 11 *U. S. Stat. at L.*, 639.

³ Convention between the United States and

The Dominican Republic, } Feb. 8, 1867, Art. VI., 15 *U. S. Stat. at L.*, (*Tr.*) 167.

Bolivia, May 13, 1858, " IV., 12 *Id.*, 1006.

Venezuela, Aug. 27, 1860, " VI., 12 *Id.*, 1146.

The Two Sicilies, } Oct. 1, 1855, " X., 11 *Id.*, 646.

By numerous French treaties, all merchandise, of which the importation or exportation is legal, may be imported or exported in foreign as well as domestic vessels. Such merchandise, imported into either nation by foreign vessels, may be delivered for consumption, transportation, or re-exportation, or stored at the disposal of the owner, or his agents, in all cases without being subject to more burdensome conditions than those which apply to merchandise in domestic vessels.

Treaty between France and

Sweden and Norway, Feb. 14, 1865, Art. IV., 9 *De Clereq.*, 172.

The Free Cities of Lübeck, Bremen & Hamburg, } Mar. 4, 1865, " VI., 9 *Id.*, 187.

Grand Duchy of Mecklenburg-Schwerin, (extended to the) Grand Duchy of Mecklenburg-Strelitz, } June 9, 1865, " VI., 9 *Id.*, 295.

Austria, Dec. 11, 1866, " IV., 9 *Id.*, 658.

Russia, June 14, 1857, " XI., 7 *Id.*, 278.

To similar effect is the treaty between France and

The Pontifical States, July 29, 1867, Art. XIV., 9 *De Clereq.*, 739.

Portugal, July 11, 1866, " XX., 9 *Id.*, 558.

See, also, treaty between the United States and

Hayti, Nov. 3, 1864, Art. X., 13 *U. S. Stat. at L.*, 711.

The Ottoman Empire, Feb. 25, 1862, " VIII., 13 *Id.*, 609.

The exception in the case of coasting and internal navigation is provided for by Article 414.

No unfavorable discriminations on account of national character or origin.

409. No discrimination in the treatment in any respect, whether as to duties, charges, privileges, drawbacks, or otherwise, shall be made by any nation against the ships of any other nation, or their contents or traffic, in favor of those of its own national character, or those of any other nation whatsoever, whether

a party to this Code or not, on account of the national character of ships or persons, or the origin of imports, or on account of the origin or destination of exports, or of property in transit through the country.¹

This article shall apply, without respect to the nationality of any foreign ports included in the voyage.²

¹ The commercial treaties provide in detail for many particulars which it is thought are comprehended in the above general principle. The scope of the special provisions of the treaties may be summarily stated as follows:

Duties on imports.—No higher or other duties shall be charged by either nation on the importation of goods in the vessels of the other than on the same in vessels of its own national character.

Treaty between the United States and

Nicaragua,	June 21, 1867, Art. VI., 15 <i>U. S. Stat. at L.</i> (Tr.) 59.
Dominican Republic,	Feb. 8, 1867, “ VI., 15 <i>Id.</i> , (Tr.) 167.
Bolivia,	May 13, 1858, “ IV., 12 <i>Id.</i> , 1006.
Belgium,	July 17, 1858, “ II.-VIII., 12 <i>Id.</i> , 1044.
Paraguay,	Feb. 4, 1859, “ VI., 12 <i>Id.</i> , 1094.
Venezuela,	Aug. 27, 1860, “ VI., 12 <i>Id.</i> , 1146.
Two Sicilies,	Oct. 1, 1855, “ X., 11 <i>Id.</i> , 646.

And see treaty between the United States and

The Netherlands, Aug. 26, 1852, Art. III., 10 *U. S. Stat. at L.*, 983.

The treaty with The Two Sicilies, above cited, and that with Hanover, June 10, 1846, Art. III., (9 *U. S. Stat. at L.*, 859,) and with Mecklenburg-Schwerin, Dec. 10, 1847, Art. III., (9 *Id.*, 912,) forbid any priority or preference to be given to either nation, or any one on their behalf, in the purchase of articles imported, on account of the national character of the vessel.

Duties on exports.—No higher or other duties shall be charged, and no less bounties or drawbacks allowed, by either nation on the exportation of goods in the vessels of the other, than on the same in vessels of its own national character.

Treaties between the United States and Nicaragua, Art. VI.; Dominican Republic, Art. VI.; Bolivia, Art. IV.; Belgium, Art. VIII.; Netherlands, Art. I., above cited.

See, also, the treaty between the United States and

Hayti,	Nov. 3, 1864, Art. XI., 13 <i>U. S. Stat. at L.</i> , 711.
Ottoman Empire,	Feb. 25, 1862, “ VIII., 13 <i>Id.</i> , 609.

By the treaty between the United States and Belgium, above, salt and the produce of national fisheries are excepted.

Merchandise of any nature and origin, exported in foreign vessels, is not liable to charges or formalities respecting the exportation, other than those to which merchandise exported by domestic vessels is liable, and is en-

titled to enjoy all rights and drawbacks, or other favors which are accorded in the case of domestic vessels.

Treaty between France and

Austria, Dec. 11, 1866, Art. VIII., 9 *De Clercq*, 658.

Sweden and Norway, Feb. 14, 1865, 9 *Id.*, 172.

A similar provision is contained in the treaty between France and

Russia, June 14, 1857, Art. XIII., 7 *De Clercq*, 278.

Pontifical States, July 29, 1867, " XVI., 9 *Id.*, 739.

Port charges.—The vessels of one nation, from wheresoever coming, and entering, laden or in ballast, any port of another nation, are not liable to pay in those ports, whether upon entry or exit, or during their sojourn, any other or greater charges of tonnage, pilotage, brokerage, quarantine, light-house dues, or other charges imposed upon vessels under whatever denomination, for the benefit of the State, the district, or municipal or local corporations, private individuals, or any other person or establishment, than those which are chargeable upon domestic vessels coming from the same place, and having the same destination.

Treaty between France and

Sweden and Norway, }
(omitting some qualifi- } Feb. 14, 1865, Art. I., 9 *De Clercq*, 172.
cations.) }

Free Cities of Lubeck, }
Bremen and Hamburg, } March 4, 1865, " II., 9 *Id.*, 187.

Grand Duchy of Meck- }
lenburg - Schwerin, — }
(extended to the) Grand } June 9, 1865, " III., 9 *Id.*, 295.
Duchy of Mecklenburg- }
Strelitz, }

Portugal, July 11, 1866, " XVIII., 9 *Id.*, 558.

Austria, Dec. 11, 1866, " I., 9 *Id.*, 658.

Russia, June 14, 1857, " III., 7 *Id.*, 278.

To very similar effect is that between France and

Pontifical States, July 29, 1867, Art. X., 9 *Id.*, 739.

Provisions for the equality of charges on vessels of both nations are also contained in the treaty between France and

San Salvador, Jan. 2, 1858, 7 *Id.*, 362.

Treaty between the United States and

The Ottoman Empire, Feb. 25, 1862, Art. IX., 13 *U. S. Stat. at L.*, 609.

And see the treaties of the United States, referred to under the paragraph, above, on "duties on imports."

Some of those treaties specify also charges for anchorage, harbor dues, buoys, clearance, salvage, and fees of public functionaries.

By the French treaties, last above cited, each nation reserves the power to impose in its own ports, on the ships of other nations, and on merchandise composing the cargo of such ships, special taxes for the service of the port.

Facilities in port.—Vessels of each nation are entitled to the same privileges in respect to stationing, lading and unlading, within the territory of the other, as are extended by the latter to domestic vessels.

Treaty between Great Britain and

Colombia, Feb. 16, 1866, Art. VIII., *(Accounts and Papers, 1867, vol. LXXIV., 36.)*Belgium, July 23, 1862, " VI., *Id.*, 1863, vol. LXXIII., (45.)France, Jan. 23, 1860, " X., *Id.*, 1860, vol. LXVIII., (30.)

Treaty between France and

Sweden and Norway, Feb. 14, 1865, Art. II., 9 *De Clercq*, 172.Free Cities of Lübeck, }
Bremen and Hamburg, } Mar. 4, 1865, " IV., 9 *Id.*, 187.Grand Duchy of Meck- }
lenburg - Schwerin — }
(extended to the Grand }
Duchy of Mecklenburg- }
Strelitz, } June 9, 1865, " IV., 9 *Id.*, 295Portugal, July 11, 1866, 9 *Id.*, 558.Russia, June 14, 1857, " VI., 7 *Id.*, 278.

By the treaty between Great Britain and Prussia, August 16, 1865, (*Accounts and Papers, 1866, vol. LXXVI., 38.*) it is provided that ships and their cargoes of each of the parties in the dominions of the other, shall be treated in every respect as national ships and their cargoes. But this stipulation does not affect the exclusive rights connected with fishery belonging to the subjects of either country, nor the local immunities enjoyed by a privileged class in Great Britain.

Discriminating duties.—No higher or other duties shall be imposed by either nation on the importation from the other nation of articles, the growth, produce, or manufacture of the other nation, than are or shall be imposed on the like articles from any nation whatever.

Treaty between the United States and

Nicaragua, June 21, 1867, Art. IV., 15 *U. S. Stat. at L., (Tr.,) 59.*Dominican Re. }
public, } Feb. 8, 1867, " IX., 15 *Id., (Tr.,) 167.*Bolivia, May 13, 1858, " VI., 12 *Id.*, 1007.Belgium, July 17, 1858, " XIII., 12 *Id.*, 1047.Venezuela, Aug. 27, 1860, " IX., 12 *Id.*, 1148.

And see treaty between the United States and

Paraguay, Feb. 4, 1859, Art. IV., 12 *Id.*, 1093.

By the treaty between the United States and the Netherlands, 1852, Art. V., (10 *U. S. Stat. at L.*, 985,) discriminating duties are allowed to some extent.

The treaty between Great Britain and Austria, Dec. 16, 1865, Art. VI., (*Accounts and Papers, 1866, vol. LXXVI., 38.*) provides that internal imposts which are levied in the territory of one party on the production, preparation, or use of any article, whether on account of the State, or on account of municipalities and corporations, shall under no pretext affect the productions of the other party in a higher or more onerous degree than the same productions of native origin.

Products of fisheries are also expressly mentioned as in addition to other articles of produce, growth or manufacture, in the treaty between the

United States and the Dominican Republic, Art. IX.; The Two Sicilies, Art. XIV., above.

Goods in transit are included in the treaty between the United States and the Swiss Confederation, Nov. 25, 1850, Art. IX., (11 *U. S. Stat. at L.*, 592.)

Charges on unladen cargo.—Foreign vessels entering a port and wishing to discharge a part of their cargo may, subject to the laws and regulations of the nation, keep on board such of the cargo as is destined to another port, whether of the same country or of another, and carry it thither, without being required to pay for such part of their cargo any duties or charges save those of the service of the port, and those are chargeable only at the same rate as is fixed for domestic vessels.

Treaty between France and

Free Cities of Lubeck,)	Mar. 4, 1865, Art. X., 9 <i>De Clercq</i> , 187.
Bremen and Hamburg,)	
Portugal,	July 11, 1866, " XXVI., 9 <i>Id.</i> , 558.
Russia,	June 14, 1857, " VII., 7 <i>Id.</i> , 278.

By the convention between the United States and Belgium, July 17, 1858, Art. XI., (12 *U. S. Stat. at L.*, 1043,) cargo retained on the ships of one nation while in the ports of the other, and destined for any foreign country, is not subject to any charges whatever other than those for the prevention of smuggling.

The most favored nation clause, which is adopted between some European powers, as well as with uncivilized or non-Christian States, seems to be a shifting rule, not adapted to a permanent Code. Fully stated, it seems to be as follows:

"It being the intention of the two high contracting parties to bind themselves by the preceding articles, to treat each other on the footing of the most favored nation, it is hereby agreed between them, that any favor, privilege, or immunity whatever, in matters of commerce and navigation, which either contracting party has actually granted, or may hereafter grant, to the subjects or citizens of any other State, shall be extended to the subjects or citizens of the other high contracting party gratuitously, if the concession in favor of that other nation shall have been gratuitous; or in return for a compensation as nearly as possible of proportionate value and effect, to be adjusted by mutual agreement, if the concession shall have been conditional." This is the form in which it appears in the treaty between the United States and

Honduras, July 4, 1864, Art. III., 13 *U. S. Stat. at L.*, 699.

See, also, to similar effect, treaty between France and

Netherlands,	July 7, 1865, Art. XXXVIII., 9 <i>De Clercq</i> , 337.
Free Cities of Lubeck,)	Mar. 4, 1865, " XXII., 9 <i>Id.</i> , 187.
Bremen and Hamburg,)	
Grand Duchy of Mecklenburg - Schwerin —	June 9, 1865, " XXIII., 9 <i>Id.</i> , 295.
(extended to the) Grand	
Duchy of Mecklenburg-Strelitz,	

For the exception to the most favored nation clause in favor of frontier traffic, Federal laws, &c., see the treaty between Great Britain and Austria, Dec. 16, 1865, Art. II., *Accounts and Papers*, 1866, vol. LXXVI., (38.)

The treaty between Great Britain and Prussia, above referred to, provides for "equality of treatment with native subjects in regard to charges on loading and unloading, to warehousing and the transit trade, as also in regard to bounties, facilities, and drawbacks.

Some of the treaties are, like Article 409, much more general than the treaties above referred to. For instance, the language of the recent treaty between Great Britain and Prussia, August 16, 1865, Art. I., (*Accounts and Papers*, 1866, vol. LXXVI., 38,) is as follows :

"British ships and their cargoes shall, in Prussia, and Prussian ships and their cargoes shall, in the United Kingdom of Great Britain and Ireland, from whatever place arriving, and whatever may be their place of destination, and whatever may be the place of origin or destination of their cargoes, be treated in every respect as national ships and their cargoes.

"It is, however, agreed that the preceding stipulation shall not affect the rights connected with fishery belonging exclusively to the subjects of either country, within their respective marine territorial limits, nor the local immunities enjoyed in Great Britain not by British subjects generally, but only by certain privileged classes in certain posts."

By the treaty between the United States and The Two Sicilies, Oct. 1, 1855, Art. VI., (11 *U. S. Stat. at L.*, 643,) it is provided that the reciprocity established shall not extend to premiums which either nation may grant to their own citizens or subjects to encourage the building of ships to sail under their own flag.

² Treaty between the United States and The Two Sicilies, above cited ; Bolivia, May 13, 1858, Art. IV., (12 *U. S. Stat. at L.*, 1006 ;) Hayti, Nov. 3, 1864, Art. XI., (13 *Id.*, 711.)

A similar provision is contained in the treaty between France and the Grand Duchy of Mecklenburg-Schwerin, (extended to the Grand Duchy of Mecklenburg-Strelitz, June 9, 1865, Art. VIII., 9 *De Clercq*. 295.

Compare treaty between France and Russia, June 14, 1857, Art. XII. 7 *Id.*, 278.

Restrictions on examination of cargo and charges.

410. Except as otherwise provided in this Code, foreign ships cannot be subjected to account for their freight, unless preparing to discharge it ; nor to pay any charges, unless they enter port ; and then only such as are chargeable upon domestic ships in the like cases.

Suggested by treaties between the United States and Prussia, 1785, (8 *U. S. Stat. at L.*, 84 ;) Bolivia, May 13, 1858, Art. III., (12 *Id.*, 1005,) which have a provision to the effect that no examination required by the laws of

either nation, of property laden in its ports on the ships of the other, can be required after the lading; and such ships shall not be searched, unless property has been clandestinely and illegally laden; in which case, the person by whose order it was carried on board, or who carried it without order, is liable to the local law; but no other person shall be molested, nor shall any other goods, nor the vessel, be detained for that cause.

It does not, however, seem desirable to recognize such a rule as of general obligation.

Ships exempt from tonnage dues.

411. The following ships are free from tonnage dues on entry, sojourn, or departure:

1. Public armed ships;
2. Ships which, entering in ballast from whatever place, neither discharge ballast, nor take in freight;
3. Ships which, passing from one port to another of the same nation, whether it be to discharge all or a part of their freight, or to lade freight, have already paid such charges;
4. Steamships engaged in the postal service, or the transportation of travellers and their baggage, and in no other commerce;
5. Ships which, entering a port, whether voluntarily or by stress, leave it without performing any act of commerce;¹ and,
6. Pleasure yachts, the passports of which state their quality as such, and which have on board no goods subject to duty, and leave port without performing any act of commerce.²

¹ Subdivisions 2, 3, 4 and 5 are from the treaty between France and Portugal, July 11, 1866, Art. XXVII., (9 *De Clercq*, 558;) Sweden and Norway, Feb. 14, 1865, Art. VII., (9 *Id.*, 172.)

² The declaration between France and several other continental Powers, (7 *De Clercq*, 622, 636,) provides that such yachts are free from all duties of navigation, but requires that they carry away all persons who arrived by them.

The treaties between France and the Free Cities of Lubeck, Bremen and Hamburg, March 4, 1865, Art. IX., (9 *De Clercq*, 187;) and with the Grand Duchy of Mecklenburg-Schwerin—(extended to the) Grand Duchy of Mecklenburg-Strelitz, June 9, 1865, Art. IX., (9 *Id.*, 295,) are to similar effect, except that they do not mention steamships as above, and the first mentioned does not declare such vessels free from tax, but only puts them upon the same footing as domestic vessels.

What acts not to be considered acts of commerce.

412. The following acts in a port of refuge are not to be considered as acts of commerce, within the last article :

1. Unlading and relading merchandise for the repair or purification thereof, or of the ship ;
2. The transfer of merchandise from one ship to another, in case the former proves unseaworthy ;
3. Expenditures necessary for food and equipment ; and,
4. The sale of damaged freight, by authority of the proper revenue officers.

Treaty between France and

Sweden and Norway, Feb. 14, 1865, Art. VII., 9 *De Clercq*, 172.

Free Cities of Lubeck, { Mar. 4, 1865, " IX., 9 *Id.*, 187.
Bremen and Hamburg, }

Computation of tonnage.

413. All tonnage dues on a foreign ship bearing a passport such as is prescribed by article 278, must be reckoned either according to the tonnage stated in the passport, or according to the mode of measurement in use in the port where the ship lies, as the master may elect.

Treaty between France and

Free Cities of Lubeck, { Mar. 4, 1865, Art. V., 9 *De Clercq*, 187.
Bremen and Hamburg, }

Grand Duchy of Meck-
lenburg - Schwerin —
(extended to the) Grand { June 9, 1865, " V., 9 *Id.*, 295.
Duchy of Mecklenburg-
Strelitz, }

Austria, Dec. 11, 1866, " II., 9 *Id.*, 658.

Pontifical States, July 29, 1867, " XI., 9 *Id.*, 739.

Honduras, Feb. 22, 1856, " XI., 7 *Id.*, 10.

Exception as to fisheries, coasting trade, and internal navigation.

414. The provisions of this Title do not prevent a nation from giving to its members, or to domestic ships¹ of any kind,² exemptions, privileges, or exclusive rights in reference to :

1. The national fisheries, or their produce ;³ or,

2. Domestic navigation,⁴ as defined by article 372.

¹ The usual language of the treaties is, that the Articles in question *do not apply* to the coasting trade, &c.; but it is intended here to make the equality apply, *as between foreign ships*, reserving the right of a nation to give exclusive or other privileges to its own people and ships over all others.

See treaty between Great Britain and Prussia, Aug. 16, 1865, (*Accounts and Papers*, 1866, vol. LXXVI., 38.)

The treaty between France and the Grand Duchy of Mecklenburg-Schwerin—(extended to the) Grand Duchy of Mecklenburg-Strelitz, June 9, 1865, Art. VII., (9 *De Clercq*, 295,) provides 'that the vessels of either power engaged in internal navigation, shall be treated on the same footing as vessels of the most favored nations.

² Treaty between the United States and

The Two Sicilies, Oct. 1, 1855, Art. XIII., 11 *U. S. Stat. at L.*, 647.

³ Treaty between France and

Austria, Dec. 11, 1866, Art. IX., 9 *De Clercq*, 658.

Pontifical States, July 29, 1867, " XVII., 9 *Id.*, 739.

And other French treaties.

⁴ Treaty between France and

Sweden and Norway, Feb. 14, 1865, Art. V., 9 *De Clercq*, 172.

Austria, Dec. 11, 1866, " V., 9 *Id.*, 658.

Pontifical States, July 29, 1867, " XIII., 9 *Id.*, 739.

Commercial travellers.

415. No nation shall impose a license tax upon commercial travellers seeking orders or making purchases for their principals in another nation, and carrying no merchandise other than samples.

This provision is from the commercial treaty between France and Switzerland, June 30, 1864, Art. XXVI., (9 *De Clercq*, 56,) which provides also, however, that such travellers shall be duly authorized by their own government, according to the formalities to be agreed upon between the two nations.

Treaty between France and

Austria, Dec. 11, 1866, Art. XV., 9 *De Clercq*, 646.

To very similar effect are the following :

Treaty between France and

Sweden and Norway, Feb. 14, 1865, Art. XV., 9 *De Clercq*, 151.

Portugal, July 11, 1866, " IX., 9 *Id.*, 558.

Free Cities of Lubeck, } Mar. 4, 1865, " XVI., 9 *Id.*, 187.

Bremen and Hamburg, }
Grand Duchy of Meck- }
lenburg - Schwerin — } June 9, 1865, " XIX., 9 *Id.*, 295.
(extended to the) Grand }
Duchy of Mecklenburg- }
Strelitz, }

The treaty between France and Belgium, April 27, 1854, Art. XIX., (6 *De Clercq*, 420.) subjects commercial travellers to a tax.

For the rule adopted between France and Switzerland, see 9 *De Clercq*, 319.

The provisions of the protocol between France and The Free Cities, in reference to regulations for commercial travellers, and the importation of samples, provided for annual licenses in two forms—one for manufacturers and merchants, and the other for commercial travellers; and also for offices in each country, for the inspection and admission of samples. 9 *De Clercq*, 20.

Duty on samples.

416. Dutiable articles, when carried as samples under the last article, shall be admitted, temporarily, free of duty. But proper security may be required for their re-exportation.

This provision is from the commercial treaty between France and Switzerland, June 30, 1864, (9 *De Clercq*, 56.) which also provides that the necessary formalities shall be regulated by agreement between the two governments.

Treaty between France and

Grand Duchy of Meck-
lenburg - Schwerin —
(extended to the) Grand
Duchy of Mecklenburg-
Strelitz,

} June 9, 1865, Art. XX., 9 *De Clercq*, 295.

Netherlands,

July 7, 1865, “ XXIII., 9 *Id.*, 337.

The regulations governing the execution of the provision for the admission of samples free of duty, and for the annual license of commercial travellers, under the treaty between France and Austria, are contained in the protocol of Dec. 11, 1866, (9 *De Clercq*, 662.)

As to the identification of samples, see also protocol to treaty between France and the Grand Duchy of Mecklenburg-Schwerin, (9 *De Clercq*, 308.)

TITLE XIII.

QUARANTINE.

ARTICLE 417. Quarantine.

418. For what diseases quarantine may be imposed.

419. Detention of ships.

420. Ships may put to sea, when.

421. Limit of quarantine.

422. Regulations.

A summary of the laws and regulations of different countries on quarantine will be found in a paper by Dr. Milroy, in the *Transactions of the British National Association for the Promotion of Social Science*, 1862, p. 872.

Another paper by the same author is found in *Id.*, vol. for 1859, p. 521. Several conventions on this subject are to be found in 6 *De Clercq*, 141; 6 *Id.*, 179; 9 *Id.*, 43; 9 *Id.*, 383.

See, also, an account of the Quarantine Conference of Paris, in *Transactions of Nat. Asso. for Promotion of Social Science*, vol. for 1859, p. 605.

Quarantine.

417. Each nation, for the protection of the public health, may impose, in any ports of its territory, quarantine upon all ships, public or private, arriving from other ports, and the persons and property on board, and may impose, on any part of its land frontiers, quarantine upon any person or property about to enter, subject to the following articles of this Title.

For what diseases quarantine may be imposed.

418. Quarantine may be imposed for any of the following diseases, and no other, viz: yellow fever, cholera, typhus or ship fever, small-pox, and any new disease, not now known, of a contagious, infectious, or pestilential nature.

Detention of ships.

419. Ships arriving in a foul and unwholesome condition, even though provided with clean bills of health, and though no case of disease has occurred during the

voyage, may be subjected to quarantine detention and purification.

Ships may put to sea, when.

420. Any ship, before breaking bulk, may put to sea, in preference to being subject to quarantine.

Limit of quarantine.

421. Quarantine shall in no case exceed thirty days.

Regulations.

422. Subject to the foregoing articles of this Title, each nation may make and enforce such quarantine regulations as it may see fit.

TITLE XIV.

RAILWAYS.

ARTICLE 423. Line between frontier stations an international route.

424. Equal facilities to members of any nation.

425. Freedom of traffic.

426. Revenue service.

427. Offenders against either nation not to be employed by the other.

428. Goods carried in passenger trains.

429. Transit of merchandise through intermediate nation.

Line between frontier stations an international route.

423. Except where otherwise provided by special compact, the portion of a railway lying between the frontier stations of two nations which the railway connects, is an international route. In all that concerns the surveillance of the road, the administrative control of each nation extends over the line proceeding from it to the frontier station of the other nation.

But the jurisdiction of the tribunals is not thereby extended beyond the frontier.

Suggested by the provisions of the convention for the international railway service between France and Spain, April 8, 1864, Art. I., 9 *De Clercq*, 12.

Equal facilities to members of any nation.

424. No distinction shall be made between the members of different nations in the price, time, or facilities of transportation; and transportation within one territory towards the other shall not be less favorably treated in those respects than that which is wholly internal.

Convention for the establishment of an international railway between France and

Belgium, Jan. 15, 1866, Art. VIII., 9 *De Clercq*, 473, 475.

Prussia, July 18, 1867, " VIII., 9 *Id.*, 736, 738.

Grand Duchy of } June 10, 1857, " II., 7 *Id.*, 274, 277.
Luxemburg, }

Bavaria, Feb. 4, 1848, " X., 5 *Id.*, 576.

The last clause of the Article is also contained in the convention between France and

Belgium, Sept. 20, 1860, Art. XI., 8 *De Clercq*, 118,

—(respecting the railways of the Ardennes and Namur.)

Belgium, Sept. 20, 1860, Art. XI., 8 *Id.*, 122,

—(respecting the railways of the Ardennes and of Luxemburg.)

Freedom of traffic.

425. Subject to the following articles, trains, whether with goods or passengers, may cross the boundary at any time of the day or night, and without exception of holidays.

Convention concerning international railway service between France and

Spain, April 8, 1864, Arts. II., IX., 9 *De Clercq*, 12, 14.

Detailed provisions respecting the revenue service are found in Arts. IV., VI.—VIII., X., XI., of the convention between France and Spain, above, and in the convention between France and

Bavaria, July 3, 1857, Arts. XII—XV., 7 *De Clercq*, 229.

Sardinia, Nov. 23, 1858, 7 *Id.*, 532.

Also in the regulation of the international railway service between France and

Sardinia, Nov. 15, 1858, 7 *De Clercq*, 529.

Belgium and the
Netherlands, Dec. 14, 1852, 6 *Id.*, 252.

Revenue service.

426. Each nation is entitled to the following facilities for its revenue and railway service, subject to the next article :

1. Each of the contiguous nations may establish and designate by its arms,¹ in the frontier station of the other, a revenue office, the necessary accommodation for which shall be provided by the latter nation, without charge :²

2. Each nation may send its revenue officers in uniform, and with or without arms,³ to and fro between its

territory and such office, in any train, in the compartments of the guard and carriages of the second class, without charge ;¹

3. Such revenue officers, and other servants of the government, or of the railway, crossing the boundary on their service as such, are, on production of their commissions, exempt from civil or military service, and from direct and personal taxes : and in respect to service within the station, remain subject to the exclusive authority of the nation employing them. In other respects, they are equally subject to the local law as other persons ;²

4. Articles necessary within the territory of one nation for the service of the other, or the maintenance of its railway, or furnishing the residences of its officers and servants, are free of duty on crossing the boundary ;³

5. The revenue officers of the two nations shall respectively communicate to each other the instructions and circulars addressed to their officers respecting the service ;

6. The administration of each railway must notify to the revenue officers, at least eight days in advance, changes proposed in the time tables : but special and extraordinary trains may be sent at any time, twelve hours' notice in advance being given of freight trains ;⁴

7. Officers and agents of each nation, and its railway, must respectively render to those of the other all reasonable co-operation in respect to international transportation, and the prevention and detection of frauds on the revenue, subject to the regulations of their own law.⁵

¹ Convention concerning the international railway service between France and

Spain, April 8, 1864, Art. XVII., 9 *De Clercq*, 12, 15.

And to similar effect, convention between France and

Sardinia, Nov. 23, 1858, Art. III., 7 *De Clercq*, 532.

Bavaria, July 3, 1857, " III., 7 *Id.*, 299.

² Convention between France and

Spain, April 8, 1864, Art. XIV., 9 *De Clercq*, 12, 15.

³ Convention between France and Bavaria, July 3, 1857, Arts. IV., V., 7 *De Clercq*, 299, —which also provides that “Ils seront dispensés des prescriptions de police sur les passe-ports.”

⁴ Convention between France and Spain, April 8, 1864, Art. V., 9 *De Clercq*, 12.

⁵ Convention between France and Bavaria, July 3, 1857, Art. VI., 7 *De Clercq*, 299, 301.

⁶ Convention between France and Spain, April 8, 1864, Art. XIX., 9 *De Clercq*, 12, 16.

Regulation of the international service of railways between France and

Sardinia, Nov. 15, 1858, Art. XVIII., 7 *De Clercq*, 529, 531.

Belgium and } 1848, “ XXIV., 5 *Id.*, 618.
Prussia, }

⁷ Convention between France and Spain, April 8, 1864, Art. XVIII., 9 *De Clercq*, 12, 15.
Bavaria, July 3, 1857, “ XXX., 7 *Id.*, 299, 304.

The latter adds: “sons peine d’être tenues de remplir a la frontiere les formalities ordinaires de douane.”

To the same effect are the regulations for international railway service between France and

Belgium and the } Dec. 14, 1852, Art. XIX., 6 *De Clercq*, 252.
Netherlands, }

Belgium and Prus- } 1848, “ XIX., 5 *Id.*, 618.
sia, }

⁸ Convention between France and Bavaria, July 3, 1857, Art. X., 7 *De Clercq*, 299, 301.
Sardinia, Nov. 3, 1858, “ XI., 7 *Id.*, 532, 534.

Offenders against either nation not to be employed by the other.

427. A nation is not bound to permit the entry upon or service within its territory, under this Title, of an officer or agent who has been convicted in its tribunals of any offense whatever.

Convention between France and
Bavaria, July 3, 1857, Art. VIII., 7 *De Clercq*, 299, 301.
Sardinia, Nov. 23, 1858, “ XVI., 7 *Id.*, 532, 534.

Goods carried in passenger trains.

428. Passengers are not entitled to take in the carriages goods or packages containing goods subject to duty, or prohibited.¹

Articles subject to duty, carried in passenger trains, may be subjected to the regulations for goods on freight

trains, except that they must be passed without more than three hours' delay.²

¹ Convention between France and

Spain, Apr. 8, 1864, Art. XII., 9 *De Clercq*, 12, 15.

Bavaria, July 3, 1857, " XXVI., 7 *Id.*, 299, 301.

Regulation of international railway service between France and

Sardinia, Nov. 15, 1858, Art. IX., 7 *De Clercq*, 529.

Belgium and the Netherlands, { Dec. 14, 1852, " XIII., 6 *Id.*, 252.

Belgium and Prussia, { 1848, " XIII., 5 *Id.*, 618.

² Convention between France and

Spain, April 8, 1864, Art. XIII., 9 *De Clercq*, 12, 15.

To similar effect, without the last clause, convention between France and

Bavaria, July 3, 1857, Art. XXVII., 7 *De Clercq*, 303.

Sardinia, Nov. 15, 1858, " X., 7 *Id.*, 529.

Belgium and the Netherlands, { Dec. 14, 1852, " XIV., 6 *Id.*, 252.

Belgium and Prussia, { 1848, XIV., 5 *Id.*, 618.

Transit of merchandise through intermediate nation.

429. Wagons, cars, or packages of merchandise, sealed by the revenue officers of one nation for international railway transportation, and passing through the territory of another nation, in course of such transportation, into the territory of a third nation, shall be treated as having been directly imported, if the seals and enclosures remain unbroken upon entering the latter, and if the transportation has been conformable to the regulations of the service. The casual breaking of the enclosures during transportation shall not affect the application of this article, if the cause, and the acts done in consequence thereof, be certified by the local authorities, and a new seal be imposed by them.

Treaty between France and

Switzerland, June 30, 1864, Art. V., 9 *De Clercq*, 49.

Similar provisions in treaty between France and

Netherlands, Art. X., 9 *De Clercq*, 337.

Portugal, July 11, 1866, " XXIV., 9 *Id.*, 558,

—require the wagons or packages to be "plombes," and do not contain the clause relative to compliance with the conditions of the international service.

TITLE XV.

TELEGRAPHS.

- ARTICLE 430. Free communication allowed.
431. Right of corresponding.
432. Classification of dispatches.
433. Dispatches of State.
434. Authentication of dispatches of State.
435. Authentication of private dispatches.
436. Language of dispatches.
437. Dispatches in cypher.
438, 439. Preference of dispatches.
440. Designation of route.
441. Government scrutiny relinquished.
442. Illegal dispatches.
443. Suspension of service.
444. Sending false dispatches ; violating dispatches, &c.
445. Regulations.

In November, 1869, the Secretary of State of the United States, by direction of the President, addressed a circular to the principal maritime powers, inviting a conference to form a joint convention for the protection of submarine cables.

The objects proposed were : 1, to make willful or wanton destruction of them punishable as piracy ; 2, to encourage future constructions, by forbidding exclusive concessions, except on consent of both nations concerned ; 3, to forbid government scrutiny at either end of a line.

The provisions of the Draft Convention proposed are embodied, in substance, in the following Articles, with some modifications, suggested by the European International Convention of Vienna, July 21, 1868.

The crime of injuring telegraphs is provided for by Article 83, and their immunity in war, by provisions in the Book on WAR.

Free communication allowed.

430. Any person may land a submarine telegraphic cable on the shores of any nation, and work the same, subject to the provisions of this Title, and the regulations made by such nation agreeably thereto, and subject to the rights and obligations attaching to private property.

The united consent of the several parties to the Code will, of course, be obtained before any legislation interfering with this right.

The American Draft of Convention, Arts. I. and II., proposes to recognize the principle that no exclusive concession for an international telegraphic line shall be made or renewed by any nation, without the consent of the nation with whose territory the concession contemplates a connection; and that no telegraphic line shall be laid immediately connecting the territories of different nations, without the consent of each nation.

But it is submitted that all restrictions in this regard should be removed, and that the right of any persons having riparian access, to communicate through the sea, should be declared.

Right of corresponding.

431. All persons, without discrimination, have the right to correspond by international telegraphs.

Convention of Vienna, 1868, Art. I.

Classification of dispatches.

432. Telegraphic dispatches are of three classes:

1. Dispatches of State;
2. Dispatches relating to the telegraphic service of the nations uniting in this Code;
3. Private dispatches.

Convention of Vienna, 1868, Art. IV.

Dispatches of State.

433. Dispatches of State include those that issue from the chief executive officer of a nation, from the ministers, from commanders of military or naval forces, from public agents mentioned in article 91, and messages in extradition; and also, the replies to such dispatches, except that dispatches of consuls and commissioners who are engaged in commerce, are not considered dispatches of State, unless addressed to an official person, and upon official business.

Convention of Vienna, 1868, Art. IV., modified by adding "messages in extradition."

It seems unnecessary to include dispatches relating to the postal service in the second class, mentioned in Article 432, as the postal and telegraphic services are not united in all the nations.

Authentication of dispatches of State.

434. Dispatches of State will be received as such only when bearing the seal, or other evidence of the authority of the sender.

Convention of Vienna, 1868, Art. V.

Authentication of private dispatches.

435. The sender of a private dispatch may be required to prove its signature.

Convention of Vienna, 1868, Art. VI.

Language of dispatches.

436. A dispatch may be written by the sender in the language of any of the nations, parties to this Code, or in any language that can be transmitted by telegraph.

The Convention of Vienna, (Art. VII.,) allows any of the languages used in the territories of the contracting States, and also Latin.

Dispatches in cypher.

437. Dispatches of State and of the telegraphic service may be written and transmitted in cypher, or secret letters, in whole or in part.

Private dispatches may be so written and transmitted, subject to the power of any nation to prohibit such dispatches from originating or being delivered within its territory.

Convention of Vienna, 1868, Arts. VIII., IX.

Preference of dispatches.

438. Subject to the next article, the transmission of dispatches shall be made in the following order :

1. Dispatches of State ;
2. Dispatches on telegraphic service ;
3. Private dispatches.

Telegraphic Convention of Vienna, 1868, Art. X.

The same.

439. A dispatch commenced cannot be interrupted, to give place to a communication of superior class, unless in case of absolute necessity.

Dispatches of the same class shall be transmitted by the original sending station, in the order of their deposit by the senders, and by the intermediate offices, in the order of their reception.

Convention of Vienna, 1868, Art. XII.

By a convention between France and Great Britain, Feb. 1, 1855, for a telegraph from Bucharest to Varna, it was provided that for messages

arriving simultaneously, the rule of the alternat should be followed.
6 *De Clercq*, 493.

It has been proposed to allow the companies to depart from the provisions of this Article, in the interest of their service, on lines connecting several places separated by considerable difference of time in longitude.

Designation of route.

440. The sender of a message may designate its route, subject to the power of the telegraphic administration to depart therefrom, if required by the exigencies of the service, or by the instructions of the nation whose territory is traversed.

Convention of Vienna, 1868, Art. XII.

Government scrutiny relinquished.

441. The proprietors of international telegraphic lines may receive, transmit, and deliver messages, without interference or scrutiny by the government of either nation, except as provided in the next two articles.

American Draft of Convention, Art. III.

Illegal dispatches.

442. A nation may authorize and require the telegraphic administration within its territory to stop the transmission of any dispatch of either class which appears to be dangerous to the security of such nation, or is contrary to its laws, to public order, or to good morals, under the obligation to give immediate notice, in the case of a dispatch of the second or third class, to the administration from whose bureau the dispatch originated; and in the case of a dispatch of the first class, to both parties to the correspondence.

Telegraphic Convention of Vienna, 1868, Art. XIII., modified by including public dispatches, and requiring notice to the parties.

Suspension of service.

443. A nation may suspend the service, within its territory, of all or any of the international telegraphic lines connecting therewith, for an unlimited time, either in a general manner, or for special kinds of correspondence, under the obligation to notify the suspension immediately to all the other nations uniting in this Code.

Convention of Vienna, 1868, Art. XIV.

Sending false dispatches ; violating dispatches, &c.

444. The following, when affecting the international telegraphic service, are public offenses :

1. Willfully originating, and tendering, or causing to be sent, false messages ;

2. Unlawfully hindering or delaying, by any act or omission, the transmission or delivery of a dispatch ; and,

3. Violating the secrecy of a dispatch, except disclosing illegal dispatches, in the cases and to the extent necessary in the enforcement of article 442, and knowingly republishing, without authority, any dispatch the secrecy of which has been so violated.

This Article is intended to protect against wrongs which have not been adequately provided for.

Regulations.

445. Each nation shall make regulations to assure secrecy, accuracy, and rapidity in the transmission of dispatches, and communicate the same to each of the other nations, but is not otherwise responsible for the telegraphic service.

Convention of Vienna, 1868, Arts. II., III., adding "accuracy," and also adding the clause requiring communication of the regulations.

TITLE XVI.

POSTAL SERVICE.

- CHAPTER XXXVI. Correspondence.
XXXVII. Postal money orders.
-

CHAPTER XXXVI.

CORRESPONDENCE.

- ARTICLE 446. Exchange of correspondence.
447. Classes of correspondence.
448. Arrangements for dispatch of mails.
449. Free entry and departure of mail ships.
450. Forwarding mails in case of deviation.
451. Private mails forbidden.
452. Weight for single rate of postage.
453. Rate of ocean postage.
454. Prepayment required.
455. Insufficient prepayment.
456. Registered correspondence.
457. Registration fee.
458. Basis for settlement of accounts.
459. Dangerous substances.
460. Regulations for dispatch of correspondence.
461. Transit of closed mails through each nation.
462. Transfer of closed mails without charge.
463. Official correspondence free.
464. Missent letters, &c.
465. Mail matter not to be detained.
466. Letters with contraband goods.
467. Violations of the mails.
468. Matters of detail.

Exchange of correspondence.

446. There shall be an exchange of correspondence between the nations, by their respective post departments: which may include correspondence originating

in or destined for any country whatever to which any of the nations serve as intermediaries.

The post department of each nation shall notify that of every other nation of the countries to which it serves as intermediary.

See the postal conventions cited under the next Article.

Classes of correspondence.

447. Subject to the provisions of this Chapter, such correspondence may include any matter of the following classes :

1. Letters, ordinary and registered ;
2. Newspapers ; book-packets ; prints of all kinds, comprising maps, plans, engravings, drawings, photographs, lithographs, and all other like productions of mechanical processes ; sheets of music ; patterns or samples of merchandise, including grains and seeds, not having a commercial value.

Postal convention between the United States and

Belgium, Aug. 21, 1867, Art. I., 16 *U. S. Stat. at L.*, (Tr.) 145.

North German Union, } Oct. 21, 1867, " I., 16 *Id.*, (Tr.) 199.

Swiss Confederation, } Oct. 11, 1867, " I., 16 *Id.*, (Tr.) 245.

Italy, Nov. 8, 1867, " I., 16 *Id.*, (Tr.) 227.

Netherlands, Sept. 26, 1867, " I., 16 *Id.*, (Tr.) 271.

Substantially the same provision is also found in the postal convention between the United States and

Great Britain, Nov. 7 and 24, 1868, Art. I., 16 *U. S. Stat. at L.*, (Tr.) 75.

An exchange of " letters, newspapers, and printed papers of all kinds," is provided for by the postal convention between Great Britain and

France, Sept. 24, 1856, Art. I., } *Acc'ts and Papers*, 1857, vol. XVIII., (11 ;) *De Clercq*. 152.

Spain, May 21, 1858, " I., *Acc'ts and Papers*, 1858, vol. LX., (28.)

Sardinia, Dec. 12, 1857, " I., *Id.*, 1858, vol. LX., (28.)

Portugal, Apr. 6, 1859, " I., *Id.*, 1859, vol. XXXII., (18.)

An exchange of " letters, patterns of goods, newspapers, courses of exchange, prices current, and other printed papers," is allowed by the postal convention between Great Britain and

Belgium, Oct. 19, 1844, Art. I., *Accounts and Papers*, 1845, vol. LII.

The following list of articles suffices to show the character and extent of mail matter, as allowed by numerous treaties :

Ordinary and registered letters ; documents of business, and other written documents which have not the character of a direct personal cor-

respondence; commercial and legal documents; corrected proofs; newspapers; gazettes; periodical works; stitched or bound books; pamphlets; sheets of music; catalogues; prospectuses; advertisements; announcements; and other notices of various kinds, whether printed, engraved or lithographed; patterns or samples of merchandise, including grains and seeds not having a mercantile value in themselves; courses of exchange; prices current; printed papers of every kind; lithographs; prints; drawings; maps; plans; music; engravings; photographs, and all other like productions of mechanical processes.

Arrangements for dispatch of mails.

448. The post department of each nation shall, at its own expense, cause its mails to be dispatched to the post department of each other nation; and, if by sea, by well-appointed ships,¹ performing regular service between the ports of the nations.

Postal convention between the United States and

Great Britain, Nov. 7, 24, 1868, Art. II., 16 *U. S. Stat. at L.*, (Tr.) 75.

North German Union, } Oct. 21, 1867, " III., 16 *Id.*, (Tr.) 199.

Italy, Nov. 8, 1867, " III., 16 *Id.*, (Tr.) 227.

Swiss Confederation, } Oct. 11, 1867, " III., 16 *Id.*, (Tr.) 245.

Netherlands, Sept. 26, 1867, " III., 16 *Id.*, (Tr.) 271.

See, also, postal convention between the United States and

Venezuela, July, 1865, June, 1866, Art. IV., 16 *U. S. Stat. at L.*, (Tr.) 312.

¹ The postal convention between Great Britain and France, Sept. 24, 1856, Art. II., (*Accounts and Papers*, 1857, vol. XVIII., (11); 7 *De Clercq*, 152,) provides that the service shall be by packets which either government may think it right to maintain, to freight, or to subsidize, for the conveyance of correspondence, and by merchant ships plying between the ports of the two nations.

The postal convention between Great Britain and Belgium, Oct. 19, 1844, Art. XII., (*Accounts and Papers*, 1845, vol. LII.,) provides that if there be no government vessels specially appointed for the direct conveyance of correspondence, the exchange of mails shall take place by means of private steam packets plying between the ports of exchange.

The postal convention between Great Britain and Portugal, April 6, 1859, Art. II., (*Accounts and Papers*, 1859, vol. XXXII., (18,)) provides that the mails exchanged by private ships shall comprise only such correspondence as the senders "shall expressly desire to be forwarded by these means, and in this case the intention of the said senders must be expressed in writing on the address."

The postal conventions between Great Britain and France, Sept. 24, 1856, Art. IV., (*Accounts and Papers*, 1857, vol. XVIII., (11); 7 *De Clercq*, 152,) and Belgium, Oct. 19, 1844, Art. VII., (*Accounts and Papers*, 1845, vol. LII.,)

provide, in effect, that ships employed in regular service are entitled to the same privileges and exemptions, whether at sea, or within the territory of any other nation, as armed public ships: except that private ships are subject to the same dues of tonnage and navigation, and port dues, and the same regulations of commerce, as if they were not so employed.

Free entry and departure of mail ships.

449. Subject to the sanitary, police, and customs regulations of the port, mail ships may enter and leave the ports which they serve, at any hour of the day or night, and may leave and take mails in the roads or at the entrance of the harbors, without anchoring, or otherwise.

Postal convention between Great Britain and

France, Sept. 24, 1856, Arts. VI., VII., { *Accounts and Papers*, 1857, vol. XVIII., (11;) 7 *De Clercq*, 152.

Forwarding mails in case of deviation.

450. If a mail ship is compelled to enter a port other than one which it serves, its mail shall, on the request of the master, or consul of the ship's nation, be freely and expeditiously forwarded by the post department of the nation, by the usual routes, to its destination.

Postal convention between Great Britain and

France, Sept. 24, 1856, Art. VIII., { *Accounts and Papers*, 1857, vol. XVIII., (11;) 7 *De Clercq*, 152.

Belgium, Oct. 19, 1844, " X., { *Accounts and Papers*, 1845, vol. LII.

Private mails forbidden.

451. Sending or carrying mail matter for hire from one nation to another, except for the post department of a nation, is a public offense, unless payment of postage is first made; and the government of any nation may require mail matter carried either gratuitously or for hire to be surrendered to its post department.

In order to secure the postage on the whole correspondence from one country to another, when that is desirable, governments have to prevent the transmission of the correspondence through any other channel than their respective offices.

The postal convention between Great Britain and France, Sept. 24, 1856, Art. XXXV., (*Accounts and Papers*, 1857, vol. XVIII., (11;) 7 *De Clercq*, 152,) and Belgium, Oct. 19, 1844, Art. XL., (*Accounts and Papers*, 1845, vol.

LII.,) provide that couriers sent by commercial firms or by other persons to convey, occasionally, a single letter, or one or more newspapers, may pass unmolested through the respective territories of both powers, provided the said couriers exhibit on the French territory the letter or newspapers which they convey, to the first post-office on their route, which office shall tax the said letter or newspapers with the rate prescribed by the laws and regulations of the country.

The said letters or newspapers shall be marked with the date and charge of the office at which the postage shall have been paid, and a certificate thereof shall be delivered to the courier, and annexed to his passport.

And the same conventions between Great Britain and France, Art. XII., and Belgium, Art. XI., further provide that the captains of packets engaged in the conveyance of mails are forbidden to take charge of any letter not included in their mail-bags, except, however, dispatches of their governments, and must take care that no letters are conveyed illegally by their crews or passengers, and must give information, in the proper quarter, of any breach of the laws which may be committed in that respect.

Weight for single rate of postage.

452. The standard weight for the single rate of international postage shall be :

1. For correspondence of the first class, fifteen grammes ; and,
2. For correspondence of the second class, one hundred grammes.

The rule of progression shall be an additional single rate for each additional single weight, or fraction thereof. The weight stated by the dispatching department shall always be accepted, saving the case of manifest mistake.

Subdivision 2 is new, in proposing an uniform unit of weight.

The other parts of the Article are from the postal convention between the United States and

Belgium, Aug. 21, 1867, Art. IV., 16 *U. S. Stat. at L.*, (*Tr.*,) 145.

North German } Oct. 21, 1867, " IV., 16 *Id.*, (*Tr.*,) 199.
Union, }

Swiss Confed- } Oct. 11, 1867, " IV., 16 *Id.*, (*Tr.*,) 245.
eration, }

Netherlands, Sept. 26, 1867, " IV., 16 *Id.*, (*Tr.*,) 271.

Italy, Nov. 8, 1867, " IV., 16 *Id.*, (*Tr.*,) 227.

This unit of weight for letters is also authorized by the postal convention between the United States and

Great Britain, Nov. 7, 24, 1868, Art. III., 16 *U. S. Stat. at L.*, (*Tr.*,) 75.

See, however, the convention with France, March 2. 1857, Art. VI., (16

Id., (Tr.) 94.) wherein the unit of weight is fixed at seven and a half grammes.

Rate of ocean postage.

453. The postage payable for each unit of weight, or fraction thereof, shall not exceed :

1. For correspondence of the first class, two one hundredth parts of a dollar ; and,

2. For correspondence of the second class, one hundredth part of a dollar.

This Article seeks to establish an uniform charge for all nations uniting in the Code, it being considered that the facilities of communication and the amount of correspondence call for the adoption, between nations, of the principle of uniformity now universally adopted in domestic postage. The rate suggested is upon the principle of Ocean Penny Postage.

Prepayment required.

454. International postage must be prepaid.

The rule generally prescribed by the treaties is, that the prepayment of postage on ordinary letters is optional, subject to the fine for insufficient payment ; but on registered letters, and on all other correspondence mentioned in class second of Article 447, it is compulsory.

Insufficient prepayment.

455. Unregistered correspondence, which by mistake is unpaid or insufficiently prepaid, shall be forwarded to its destination, charged with double the deficiency, which charge shall be retained for the benefit of the department collecting the same.

Several of the treaties require unpaid matter to be forwarded, but the above seems to be a better rule. The same treaties impose a fine, which, with the deficient postage, goes to the collecting department.

Registered correspondence.

456. Any correspondence may be registered.¹

Registered correspondence may be sent by the same routes, whether direct or intermediary, as ordinary correspondence.

¹ Postal convention between the United States and

Belgium, Aug. 21, 1867, Art. X., 16 *U. S. Stat. at L.*, (Tr.) 146.

North German Union, { Oct. 21, 1867, " IX., 16 *Id.*, (Tr.) 201.

Swiss Confederation, { Oct. 11, 1867, " IX., 16 *Id.*, (Tr.) 246.

Italy, Nov. 8, 1867, " XII., 16 *Id.*, (Tr.) 228.

Netherlands, Sept. 26, 1867, " X., 17 *Id.*, (Tr.) 272.

² See postal convention between the United States and Great Britain, Nov. 7, 24, 1868, Arts. VIII., IX., 16 *U. S. Stat. at L.*, (Tr.) 77.

Postal convention between Great Britain and

France,	Sept. 24, 1856, Art. XVII.,	{ <i>Accounts and Papers</i> , 1857, vol. XVIII., (11,) 7 <i>De Clercq</i> , 152.
Belgium,	Oct. 19, 1844, " XVI.,	{ <i>Accounts and Papers</i> , 1845, vol. LII.
Spain,	May 21, 1858, " IX.,	<i>Id.</i> , 1858, vol. LX., (28.)
Sardinia,	Dec. 12, 1857, " XIII.,	<i>Id.</i> , 1858, vol. LX., (28.)
Portugal,	Apr. 6, 1859, " XI.,	<i>Id.</i> , 1859, vol. XXXII., (18.)

It is provided in Art. VII. of the Regulations attached to the postal convention between the United States and Belgium, Aug. 21, 1867, (16 *U. S. Stat. at L.*, (Tr.) 149,) and by the postal convention between the United States and

Bremen,	May 17, 1855, Art. I.,	16 <i>U. S. Stat. at L.</i> , (Tr.) 175.
Hamburg,	Nov. 11, 1863, " I.,	16 <i>Id.</i> , (Tr.) 181.
Prussia,	Aug. 29, Oct. 14, 1855, " I.,	16 <i>Id.</i> , (Tr.) 196.
North German Union,	{ Oct. 21, 1867, " IX.,	16 <i>Id.</i> , (Tr.) 201.
Canada,	Aug. 25, 28, 1856, " I.,	16 <i>Id.</i> , (Tr.) 303,

that needful measures for the careful transmission of registered correspondence, and for pursuing it when lost, are to be taken; but neither assumes towards the other any pecuniary responsibility in case of loss.

Registration fee.

457. In addition to the postage of registered correspondence, there may also be charged a registration fee,¹ the amount of which shall be fixed by the dispatching post department.

Postal convention between Great Britain and

Spain,	May 21, 1858, Art. IX.,	{ <i>Accounts and Papers</i> , 1858, vol. LX., (28.)
Sardinia,	Dec. 12, 1857, " XIII.,	<i>Id.</i> , 1858, vol. LX., (28.)
Portugal,	Apr. 6, 1859, " XI.,	<i>Id.</i> , 1859, vol. XXXII., (18.)

Postal convention between the United States and

Great Britain, Nov. 7, 24, 1868, Art. VIII., 16 *U. S. Stat. at L.*, (Tr.) 77.

¹ Postal convention between the United States and

Bremen,	May 17, 1855, Art. I.,	16 <i>U. S. Stat. at L.</i> , (Tr.) 175.
Hamburg,	Nov. 11, 1863, " I.,	16 <i>Id.</i> , (Tr.) 181.
Prussia,	Aug. 29, Oct. 14, 1855, " I.,	16 <i>Id.</i> , (Tr.) 196.
North German Union,	{ Oct. 21, 1867, " X.,	16 <i>Id.</i> , (Tr.) 201.
Swiss Confederation,	{ Oct. 11, 1867, " VIII.,	16 <i>Id.</i> , (Tr.) 246.
Netherlands,	Sept. 26, 1867, " IX.,	16 <i>Id.</i> , (Tr.) 272.

Basis for settlement of accounts.

458. Accounts between any two post departments shall be settled on the following basis, unless otherwise provided by special compact: from the total amount of international postages and registration fees, collected in each country on letters, added to the total amount of prepaid postages and registration fees on other articles sent, the dispatching office shall deduct the amount required, at the agreed rate for the intermediate transit thereof between the two countries; and the amount of the two net sums' shall be equally divided between the two departments.

Postal convention between the United States and

Belgium, Aug. 21, 1867, Art. XI., 16 *U. S. Stat. at L., (Tr.)* 146.

North German } Oct. 21, 1867, " XI., 16 *Id., (Tr.)* 201.
Union,

North German } Ap. 7, 23, 1870, " IV., 16 *Id., (Tr.)* 379.
Union,

Italy, Nov. 8, 1867, " VIII., 16 *Id., (Tr.)* 228.

See, also, the postal convention between the United States' and Great Britain, Nov. 7, 24, 1868, Art. VI., 16 *U. S. Stat. at L., (Tr.)* 76.

¹ By the postal convention between the United States and the Swiss Confederation, Oct. 11, 1867, (16 *U. S. Stat. at L., (Tr.)* 246,) the "two net sums shall be divided between the two offices in the proportion of three-fifths (3-5ths) to the United States, and two-fifths (2-5ths) to the Swiss office."

And a similar basis for the settlement of accounts is to be found in the postal convention between the United States and Netherlands, Sept. 26, 1867, Art. XI., 16 *U. S. Stat. at L., (Tr.)* 272.

In the postal convention between United States and Italy, Nov. 8, 1867, Art. VIII., (16 *U. S. Stat. at L., (Tr.)* 228,) there is added the following:

"There shall be excluded from the account all fines upon unpaid or insufficiently paid correspondence, and the deficient postages upon articles mentioned in the second subdivision of Article I., (class second, Article 447,) all of which shall be retained to the use of the administration which collects them."

Dangerous substances.

459. No person shall post any thing containing explosive or other dangerous substances.

3 & 4 *Vict. ch. 96, § LXII.*

Regulations for dispatch of correspondence.

460. Correspondence of the second class shall be dispatched under the following regulations, and such

additional regulations as may from time to time be established by the dispatching post department :

1. No packet¹ shall contain anything which is closed against inspection, nor any written communication whatever,² except to state from whom or to whom the packet is sent, and the number and price placed upon each pattern or sample of merchandise ;³

2. No packet shall exceed two feet in length, or one foot in any other dimension ;

3. No office shall be bound to deliver any article the importation of which is prohibited by the laws or regulations of the country of destination ;⁴

4. So long as any customs duty is chargeable on any article sent to any nation, it may be levied for the use of the customs of that nation ;⁵ and,

5. Except as above provided, no charge whatever, otherwise than is expressly provided by special compact, shall be levied or collected on the correspondence transmitted.⁶

Postal convention between the United States and

Great Britain, Nov. 7, 24, 1868, Art. V., 16 *U. S. Stat. at L.*, (Tr.), 76.

Belgium, Aug. 21, 1867, " XII., 16 *Id.*, (Tr.), 146.

North German } Oct. 21, 1867, " VIII., 16 *Id.*, (Tr.), 200.
Union,

Italy, Nov. 8, 1867, " IX., X., 16 *Id.*, (Tr.), 228.

Swiss Confed- } Oct. 11, 1867, " XI., 16 *Id.*, (Tr.), 246.
eration,

Netherlands, Sept. 26, 1867, " XII., 16 *Id.*, (Tr.), 272.

And it is also provided in the convention with Italy, above, that " there shall be admitted no liquid nor other article which might injure the other correspondence."

¹ By the postal convention between Great Britain and Sardinia, Dec. 12, 1857, Art. XIV., *Accounts and Papers*, 1858, vol. LX., (28,) " a book-packet may contain any number of separate books or other publications, prints, or maps, and (subject to the consent of the French post-office,) any quantity of paper, parchment or vellum ; and the books or other publications, prints, maps, &c., may be (subject to the like consent), either printed, written, or plain, or any mixture of the three. Further, all legitimate binding, mounting, or covering of a book, publication, &c., or of a portion thereof, shall be allowed, whether such binding, &c., be loose or attached ; as also rollers, in the case of prints or maps, markers, (whether of paper or otherwise,) in the case of books ; and, in short, whatever is necessary for the safe transmission of literary or artistic matter, or usually apper-

tains thereto : but no patterns, or books of patterns, (unless these consist merely of paper,) shall be allowed."

² Postal convention between Great Britain and

Spain, May 21, 1858, Art. XI., *Accounts & Papers*, 1858, LX., (28.)

Sardinia, Dec. 12, 1857, " XIV., *Id.*, 1858, LX., (28.)

By the postal convention between Great Britain and

France, Dec. 6, 1855, Art. II., } *Accounts and Papers*, 1856, LXI.;
(24,) 6 *De Clercq*, 586.

France, Sept 24, 1856, " XIX., } *Accounts & Papers*, 1857, XVIII.,
(11,) 7 *De Clercq*, 152.

Portugal, Apr. 6, 1859. " XIV., } *Accounts & Papers*, 1859, XXXII.,
(18,)

printed papers must not contain any writing, figure, or manual mark whatsoever, or they will be treated as letters, and charged accordingly.

By the postal convention between Great Britain and Belgium, Oct. 19, 1844, Art. XXI., *Accounts and Papers*, 1845, LII., "courses of exchange, prices current, and such other printed papers as are allowed, in the United Kingdom of Great Britain and Ireland, to pass by post at a reduced rate," . . . "must not contain any writing, figures, or manual mark whatsoever."

By the postal convention between Great Britain and France, July 2, 1861, Arts. I., II., *Accounts and Papers*, 1861, vol. LXV., (32,) "patterns of no intrinsic value, photographs, commercial and legal documents, printed, engraved or lithographed works, bearing either corrections or manual notes, and all other papers in manuscript," shall enjoy the privileges of printed papers bearing no manual mark, provided that the postage thereon is prepaid to destination, that they may be easily examined; and that they contain no letter, or note of the nature of a letter, or which could serve as such; otherwise, they will be treated as letters, and charged accordingly.

The postal convention between the United States and Prussia, July 11, and Aug. 26, 1852, Art. V., (16 *U. S. Stat. at L.*, (Tr.) 184,) provides that newspapers are to be subject to the laws and regulations of each country, respectively, in regard to their liability to be rated with letter postage when containing written matter, or for any other cause specified in said laws and regulations.

³ The postal convention between Great Britain and Belgium, Oct. 19, 1844, Art. XXXI., above, provides that courses of exchange and prices current shall merely give the name and prices of goods, without any mention of the name and residence of the vendors.

⁴ Postal convention between Great Britain and France, 1845, Art. I.; France, 1856, Art. XVIII.; Spain, 1858, Art. XV.; and Sardinia, 1857, Art. XVIII., above.

⁵ It is expressly agreed by the postal conventions between Great Britain and France, 1855 and 1856, above, that printed papers which each of the two offices shall deliver to the other as paid to destination, shall not, on any pretext, be charged with any rate or duty whatever to be paid by the receivers.

And by the convention between Great Britain and Spain, 1858, above, books, prints, drawings, maps and music sent separately, are to remain subject to the regulations and duties of the customs.

⁶ Postal convention between the United States and Venezuela, July, 1865, June, 1866, Art. V., 16 *U. S. Stat. at L.*, (Tr.), 312.

Postal convention between Great Britain and Spain, 1858, Art. XV.; Sardinia, 1857, Art. XVIII.; Portugal, 1859, Art. XI., above, excepting the case of insufficiently paid correspondence.

Transit of closed mails through each nation.

461. The post department of each nation shall grant to the post department of every other nation the transit through its territory,¹ and conveyance by its usual means of mail transportation, whether by land or sea, and at the usual cost of transportation, of the closed mails exchanged in either direction between the latter and any country to which the former may serve as intermediary.

Postal convention between the United States and

Great Britain, Nov. 7, 24, 1868, Art. X., 16 *U. S. Stat. at L.* (Tr.), 77.

Belgium, Aug. 21, 1867, " XIV., 16 *Id.*, (Tr.), 147.

Italy, July 8, 1863, " XX., 16 *Id.*, (Tr.), 225.

North German } Oct. 21, 1867, " XIII., 16 *Id.*, (Tr.), 201.
Union, }

Italy, Nov. 8, 1867, " XII., 16 *Id.*, (Tr.), 229.

Swiss Confed- } Oct. 11, 1867, " XIII., 16 *Id.*, (Tr.), 247.
eration, }

Netherlands, Sept. 26, 1867, " XIV., 16 *Id.*, (Tr.), 273.

Mexico, Dec. 11, 1861, " VII., 16 *Id.*, (Tr.), 306.

Venezuela, Jy. '65, Je. 1866, " VII., 16 *Id.*, (Tr.), 312.

Postal convention between Great Britain and

France, Sept. 24, 1856, Art. XXVII., } *Accounts and Papers*, 1857, vol.
XVIII., (11,) 7 *De Clercq*, 152.

Belgium, Oct. 19, 1844, " XXV., } *Accounts and Papers*, 1845, vol.
XXVI., } LII.

¹ By the convention between the United States and the Swiss Confederation, Netherlands, and Venezuela, above, such territorial transit shall be reciprocally free of charge.

By the convention between the United States and Mexico, above, territorial transit in closed mails shall be reciprocally free from any postage duties, imposts, detention or examination whatever.

By the convention between the United States and Italy, 1863, above; Mexico, Dec. 11, 1861, Art. VII., (16 *U. S. Stat. at L.*, (Tr.), 307;) Venezuela, July, 1865, June, 1866, Art. VII., (16 *Id.*, (Tr.), 317;) and the convention between Great Britain and France, Sept. 24, 1856, Art. XXIX., *Accounts and Papers*, 1857, vol. XVIII., (11,) the privilege is also accorded to each

administration, of sending an agent, at its own expense, in charge of the mails in transit.

Transfer of closed mails without charge.

462. The transfer of a closed mail from one ship to another, without expense to the post department of the place, is not to be deemed a territorial transit, nor subject to postal charges by such department.

Postal convention between the United States and

Great Britain, Nov. 7, 24, 1868, Art. XII., 16 *U. S. Stat. at L.*, (Tr.) 77.

Belgium, Aug. 21, 1867, " XVI., 16 *Id.*, (Tr.) 147.

Italy, July 8, 1863, " XX., 16 *Id.*, (Tr.) 225.

North German Union, { Oct. 21, 1867, " XV., 16 *Id.*, (Tr.) 201.

Italy, Nov. 8, 1867, " XIV., 16 *Id.*, (Tr.) 229.

Swiss Confederation, { Oct. 11, 1867, " XV., 16 *Id.*, (Tr.) 247.

Netherlands, Sept. 26, 1867, " XVI., 16 *Id.*, (Tr.) 273.

Venezuela, Jy.'65, J'e. 1866, " VII., 16 *Id.*, (Tr.) 312.

Official correspondence free.

463. Correspondence between a government and its public ministers, and their official families abroad, and between the post departments of different nations, is free.

Postal convention between the United States and Venezuela, July, 1865, June, 1866, Art. IX., 16 *U. S. Stat. at L.*, (Tr.) 312.

Postal convention between Great Britain and Portugal, April 6, 1859, Art. XXIII., *Accounts and Papers*, 1859, vol. XXXII., (18.)

And these further provide that such correspondence shall be conveyed with all the precautions which each government may find necessary for its inviolability and security.

Postal convention between the United States and

Great Britain, Nov. 7, 24, 1868, Art. XVIII., 16 *U. S. Stat. at L.*, (Tr.) 78.

Belgium, Aug. 21, 1867, " XVII., 16 *Id.*, (Tr.) 147.

North German Union, { Oct. 21, 1867, " XVI., 16 *Id.*, (Tr.) 202.

Swiss Confederation, { Oct. 11, 1867, " XVI., 16 *Id.*, (Tr.) 247.

Netherlands, Sept. 26, 1867, " XVII., 16 *Id.*, (Tr.) 273.

Italy, July 8, 1863, " XVI., 16 *Id.*, (Tr.) 225.

Italy, Nov. 8, 1867, " XV., 16 *Id.*, (Tr.) 229.

Missent letters, &c.

464. Letters, and all registered correspondence, misdirected or missent, or not delivered for any cause,

shall be returned to the dispatching post department, at its expense, unopened and without delay.

Correspondence addressed to persons who have changed their address, shall be forwarded or returned, charged with the rate that would have been paid by the receivers.¹

All other correspondence shall be at the disposal of the receiving department.

Postal convention between the United States and

Belgium, Aug. 21, 1867, Art. XIX., 16 *U. S. Stat. at L.*, (Tr.) 147.

North German } Oct. 21, 1867, " XVII., 16 *Id.*, (Tr.) 202.
Union, }

Italy, July 8, 1863, " XVII., XVIII., 16 *Id.*, (Tr.) 225.

Italy, Nov. 8, 1867, " XVI., 16 *Id.*, (Tr.) 229.

Swiss Confed- } Oct. 11, 1867, " XVII., 16 *Id.*, (Tr.) 247.
eration, }

Netherlands, Sept. 26, 1867, " XVIII., 16 *Id.*, (Tr.) 273.

Postal convention between Great Britain and

France, Sept. 24, 1856, Art. XXXIII., XXXIV., { *Accounts & Papers*,
1857, vol. XVIII.,
(11.) 7 *De Clercq.*,
152.

Belgium Oct. 19, 1844, " XXXVII.-XXXIX., { *Accounts & Papers*,
1845, vol. LII.

Sardinia, Dec. 12, 1857, " XIX., XX, { *Id.*, 1858, vol. LX.,
(28.)

Portugal, Apr. 6, 1859, " XXV., XXVI., { *Id.*, '59, vol. XXXII.,
(18.)

See, also, convention with Spain, May 21, 1858, Art. XIX., *Id.*, 1858, vol. LX., (28.)

Provision for the return of dead letters only is to be found in the postal convention between the United States and

France, March 2, 1857, Art. XV., 16 *U. S. Stat. at L.*, (Tr.) 96,

Guatemala, Je. 4, Jy. 16, 1862, " V., 16 *Id.*, (Tr.) 310.

Canada, Aug. 25, 28, 1856, " X., 16 *Id.*, (Tr.) 303.

For the return of dead "letters and other communications in manuscript," in the convention between the United States and Venezuela, July, 1865, June, 1866, Art. VI., 16 *U. S. Stat. at L.*, (Tr.) 312.

For the return of "letters, newspapers, and other printed papers," in the postal convention between Great Britain and

Spain, May 21, 1858, Arts. XIX., XX., { *Accounts and Papers*, 1858,
vol. LX., (28.)

For the return of "letters, book-packets, and patterns of merchandise misdirected or missent," and "dead letters, newspapers, &c." in the regulations attached to the convention between the United States and

Great Britain, Nov. 7, 24, 1868, Art. XIII., XV., { 16 *U. S. Stat. at L.*,
(Tr.) 83.

France, March 2, 1857, " IX., 16 *Id.*, (Tr.) 95.

But it is expressly stated that "newspapers" are *not* to be returned, in the convention between the United States and Prussia, July 17, Aug. 26, 1852, Art. XIV., 16 *Id.*, (*Tr.*) 186; and Venezuela, above; and this exception, extended to "samples of merchandise, prints of all kinds, &c.," is found in the postal convention between the United States and Italy, July 8, 1863, Art. XVIII., 16 *Id.*, (*Tr.*) 225.

By the regulations attached to the postal convention between the United States and Great Britain, Nov. 7, 24, 1863, Art. XIV., (16 *U. S. Stat. at L.*, (*Tr.*) 83,) "letters forwarded for the purpose of annoying or injuring the parties to whom they are addressed, [the postage of which both offices are authorized to return to the public even after they have been opened,] may be included and admitted with the dead letters mutually returned."

Mail matter not to be detained.

465. Subject to the next article, all correspondence posted in one country for another, or received in one country from another, is free from all detention or inspection, and shall be forwarded by the most speedy means to its destination, or promptly delivered to its address, as the case may be; being subject, in its transmission, to the laws and regulations of each country, respectively.

Postal convention between the United States and

Mexico, Dec. 11, 1861, Art. V., 16 *U. S. Stat. at L.*, (*Tr.*) 306.

Venezuela, July, 1865, June, 1866, " V., 16 *Id.*, (*Tr.*) 312.

Letters with contraband goods.

466. Any correspondence suspected to contain contraband goods, may be opened and examined in presence of the party to whom it is addressed; and if, on such examination, contraband goods are discovered, the letter and its contents may be detained.

3 & 4 *Vict.*, ch. 96, § LXV.

Violations of the mails.

467. The unlawful hindrance of the international postal service, or interference with or appropriation of any correspondence entrusted thereto, or violation of the secrecy of such correspondence, is a public offense.

Suggested by Act of Congress of the United States, 1864, ch. 197, § 12, 13 *U. S. Stat. at L.*, 337; and Acts of Parliament, 7 *Will.* IV.; 1 *Vict.*, ch. 36, §§ XXV., &c.

Matters of detail.

468. The designation of offices through which ex-

change of correspondence shall take place, the routes and conveyances, the settlement of accounts, and other matters of detail, not provided for in this Chapter, may be determined by special compact between the nations immediately concerned.

CHAPTER XXXVII.

POSTAL MONEY ORDERS.

ARTICLE 469. International postal money orders.

- 470. Money order offices.
- 471. Language.
- 472. Charges.
- 473. Gold basis.
- 474. Indorsement.
- 475. Unclaimed money.
- 476. Settlement of accounts.

International postal money orders.

469. The post department of each nation shall issue money orders for the transmission between persons in different nations, of sums specified, not exceeding one hundred dollars.¹

Fifty dollars is the limit set by the conventions for exchange of postal money orders between France and

Prussia, July 3, 1865, Art. I., 9 *De Clercq*, 329.

Switzerland, Mar. 22, 1865, 9 *Id.*, 205.

Belgium, Mar. 1, 1865, 9 *Id.*, 185.

Italy, Apr. 8, 1864, 9 *Id.*, 10.

Postal convention between the United States and

Swiss Confed- } Oct. 12, 1867, Art. I., 16 *U. S. Stat. at L.*, (Tr.) 321.
eration,

Italy, Nov. 8, 1867, " XVII., 16 *Id.*, (Tr.) 229.

Italy, July 8, 1863, " XXII., 16 *Id.*, (Tr.) 225.

¹ The French treaties fix the limit at two hundred francs.

Money order offices.

470. Postal money orders shall be issued at the office of the post department in the cities of London, Paris, New York, Berlin, St. Petersburg, Vienna, and the other capital cities of the nations parties to this Code ;

and in such others as shall from time to time be designated by special compact between the corresponding nations.

The existing treaties generally leave the designation of all the money order offices to special conventions; but in a general system, it seems proper that all nations should unite in fixing and promulgating the designation of certain central offices, correspondence with which shall be common to all.

Language.

471. The postal money orders shall be in the languages of the corresponding nations.

The French treaties prescribe the French language, providing, however, that the German shall accompany the French text, in the orders issued from the German offices.

Charges.

472. There shall be charged on each remittance of funds, under this Chapter, a tax of one per cent., which shall always be paid by the sender.¹

Postal money orders, and receipts or acquittances therefor, are not subject to any other tax or charge.

¹ A tax of twenty centimes for ten francs, or fraction of ten francs, is provided by the convention for exchange of postal money orders between France and

Switzerland, Mar. 22, 1865, Art. II., 9 *De Clercq*, 205.

Belgium, Mar. 1, 1865, 9 *Id.*, 185.

Italy, Apr. 8, 1864, 9 *Id.*, 10.

The convention between France and Prussia, July 3, 1865, Art. II., (9 *De Clercq*, 329,) is to the same effect, except that as to mandates delivered by a Prussian office, the tax is two silver groschen for every rate of three thalers.

The above treaties provide that the tax shall be divided equally between the two postal departments concerned.

The postal convention between the United States and The Swiss Confederation, Oct. 12, 1867, Art. V., (16 *U. S. Stat. at L.*, (*Tr.*) 321, prescribes a complicated rule involving, 1, the domestic money order charge of the dispatching office; 2, a charge for international exchange to be fixed by the dispatching office, and 3, the domestic charge of the receiving office; the first two to be prepaid, and the third to be paid at the office of destination.

Gold basis.

473. If, for the internal convenience of any country, any other currency than gold shall be paid to the beneficiary of the money order, it shall be made as nearly

as practicable the equivalent of gold, according to the relative values existing at the time ; and if the sender is allowed to pay for his order in any other currency than gold, the amount certified by the international office is, in all cases, to be the equivalent in gold.

Postal convention between the United States and the Swiss Confederation, Oct. 12, 1867, Art. VII., 16 *U. S. Stat. at L.*, (Tr.), 322.

Indorsement.

474. Postal money orders are transferable by indorsement.

Convention for exchange of postal money orders between France and

Prussia, July 3, 1865, Art. I., 9 *De Clercq*, 329.

Switzerland, Mar. 22, 1865, 9 *Id.*, 205.

Belgium, Mar. 1, 1865, 9 *Id.*, 185.

Italy, Apr. 8, 1864, 9 *Id.*, 10.

Unclaimed money.

475. Sums, unclaimed by those entitled to them, for a period of eight years, become the property of the administration which issued the orders.

Convention for the exchange of postal money orders between France and

Prussia, July 3, 1865, Art. VI., 9 *De Clercq*, 329.

Switzerland, Mar. 22, 1865, " V., 9 *Id.*, 205.

Belgium, Mar. , 1865, " V., 9 *Id.*, 185.

Italy, Apr. 8, 1864, " V., 9 *Id.*, 10.

Compare, however, the postal convention between the United States and The Swiss Confederation, Oct. 12, 1867, Art. VIII., (16 *U. S. Stat. at L.*, (Tr.), 322,) which contains a provision that sums which, after a reasonable delay, cannot for any cause be paid to the beneficiary, shall be re-certified to the dispatching administration, for the benefit of the sender, to be repaid in the manner conformable to the interior regulations of the country of origin.

But the administration re-certifying the same shall have the right to first deduct its domestic charge of the same amount as if the remittance had been paid to the beneficiary.

Settlement of accounts.

476. The post departments of the corresponding nations shall fix, by special compact with each other, respectively, the times and mode of stating and settling the accounts between them, under this Chapter, and of paying the balance found due from one nation to the other.

TITLE XVII.

PATENTS.

The feasibility of an international patent law is questioned in the *Transactions of the British National Association for Promotion of Social Science*, 1862, p. 884; 1861, p. 804.

ARTICLE 477. Protection of patents.

Protection of patents.

477. The same protection which any nation extends to its own members, or to inventions, designs, or discoveries made within its limits, shall be extended upon the same terms and conditions to members of the other nations, and to inventions, designs or discoveries made in any of the other nations, except that, to secure for a work already patented in one nation protection in another, the time for registering it in the latter may be limited to three months.

TITLE XVIII.

TRADE-MARKS.

ARTICLE 478. What may be appropriated.

479. Exceptions.

480. Registry of foreign trade-mark.

481. Declaration.

482. Offices where registry is to be made.

483. Equal privileges of foreigners.

What may be appropriated.

478. One who produces or deals¹ in a particular thing,² may appropriate to the exclusive³ use of himself, and his successors⁴ in interest, as a trade-mark, within any nation party to this Code, any name, form, or symbol which has not been so appropriated by another in such nation,⁵ to designate the origin or ownership thereof. But this Title does not authorize the exclusive appropriation of that which is merely either,

1. A name already enjoyed by another person, firm or corporation ;⁶ or,

2. A common or proper name already in use to designate the thing, or any of its qualities, or its destination ; or,

3. An arbitrary sign, not signifying origin or ownership.⁷

¹ A dealer is entitled to protection, though he be not a manufacturer. *Taylor v. Carpenter*, 2 *Sandford's Ch. (New York) Rep.*, 603.

A product of nature, such as the waters of a mineral spring, named and dealt in by the plaintiff, is within the principles of the law of trade-marks. *The Congress & Empire Spring Co. v. High Rock Congress Spring Co.*, New York Court of Appeals, April, 1871, 10 *Abbott's Pr. (New York) Rep.*, (N. S.), 349.

The doctrine of trade-marks is founded on the necessity of protection for business interests. The mere assumption of a family name, without any connection with trade, is not the subject of a civil action by the English law. *Du Boulay v. Du Boulay*, 2 *Law Rep., Privy Council*, 430

17 *Weekly Rep.*, 594; 38 *Law Journal*, *Privy Council*, 35; 6 *Moore's Privy Council Cases*, (N. S.), 31. Nor can one who does not produce, or deal in, an article invoke the law of trade-marks to prevent the producer of, or dealer in, it from using the name of the former. Such a grievance is rather in the nature of defamation. *Clark v. Freeman*, 12 *Jurist*, 149; 17 *Law Journal*, *Ch.*, 142.

² The title of a newspaper is within the principle. *Matsell v. Flanagan*, 2 *Abbott's Pr. (New York) Rep.*, (N. S.), 459; *Stephens v. De Conto*, 4 *Id.*, 47. And the principle may have a local application to a particular business; *e. g.*, to the title of a hotel. *Howard v. Henriques*, 3 *Sandford's (New York) Rep.*, 725; *Deitz v. Lamb*, 6 *Robertson's (New York) Rep.*, 537.

³ In *Lemoine v. Ganton*, (2 *E. D. Smith*, 343,) it was held that, after a manufacturer had changed his trade-mark, he was still entitled to enjoin the sale by others of goods put up by them under the trade-mark which he had discontinued, thus falsely purporting to be of his manufacture.

⁴ The right to use a trade-mark is assignable, even when the mark is a personal one, unless it be so purely personal as to import that the thing is the manufacture of a particular person. *Berry v. Bedford*, 10 *Jur.* (N. S.), 503; 33 *L. J. Chanc.*, 465; 12 *W. R.*, 727; 10 *L. T.*, (N. S.), 470. In such a case the assignee's use would be deceptive, and therefore would not be protected. *Leather Cloth Co. v. American Leather Co.*, 11 *Jur.*, (N. S.), 513; 35 *L. J. Chanc.*, 53; 13 *W. R.*, 873; 12 *Law Times*, (N. S.), 742; 11 *House of Lords Cas.*, 523. See Article 479.

The right to use the trade-mark passes, by operation of law, by an assignment of the business: thus, a sale of a mineral spring, without expressly including the good-will, or the right to use particular marks, carries to the purchaser the right to use the name of the spring adopted by the former proprietors as a trade-mark. *The Congress & Empire Spring Co. v. High Rock Congress Spring Co.*, 10 *Abbott's Pr. (New York) Rep.*, (N. S.), 349.

See, also, *Hudson v. Osborne*, 39 *Law Jour. Chanc.*, 79.

⁵ The use is protected only in the places where the trade-mark is used by the plaintiff before it is used by others. *Corwin v. Daly*, 7 *Bosworth*, (New York) *Rep.*, 222.

⁶ Act of Congress, July 8, 1870, § 79; *Faber v. Faber*, 49 *Barbour*, 357; S. C., 3 *Abb. Pr.*, (N. S.), 115.

And see *Burgess v. Burgess*, 3 *De G. M. & G.*, 896; 17 *Jur.*, 292; 22 *L. J. Chanc.*, 675; *Schweitzer v. Atkins*, 37 *Law Jour. Chanc.*, 847; 16 *Weekly Rep.*, 1080; 19 *Law Times*, (N. S.), 6.

⁷ *Collins Co. v. Brown*, 3 *Kay & Johns.*, 428; 3 *Jurist*, (N. S.), 929; *Amoskeag Manufacturing Co. v. Spear*, 2 *Sandf.*, 599; *Fetridge v. Wells*, 4 *Abb. Pr.*, 144.

The effect of this qualification will be, in accordance with the English and American decisions, that the prior use or appropriation of any name or sign of either of these classes can only be protected in the case of foreign trade-marks, when accompanied by a mark sufficient to distinguish its origin or ownership from the same name or sign when lawfully

used by other persons; and then it is only the combined mark that is protected.

Exceptions.

479. Article 478 does not apply to any unlawful business, or to any material which is injurious in itself, or to any trade-mark which has been fraudulently obtained, or which is used with the design of deceiving the public in the purchase or use of any material.

Act of Congress of the United States concerning patents, &c., July 8, 1870, Art. 84, *U. S. Stat. at L.*, vol. 16; *Leather Cloth Co. v. American Leather Cloth Co.*, 11 *Jur.*, (*N. S.*) 513; 35 *L. J.*, *Chanc.*, 53; 13 *W. R.*, 873; 12 *L. T.*, (*N. S.*) 742; 11 *H. L. Cas.*, 523; *Hobbs v. Francais*, 19 *How. Pr.*, 567.

It was held in *Curtis v. Bryan*, (36 *How. Pr.*, 33,) that the principles upon which courts have refused to protect a trade-mark which involved a deception upon the public, do not extend to cases where the deception alleged is not in the trade-mark itself, but in advertisements used to advance the sales of the article; but the provision of the act of Congress of the United States, mentioned above, seems to refuse protection in such a case.

The use of the word "patent," however, on goods not actually patented, but which by long usage are known by that name in the trade, is not such a misrepresentation as deprives the user of protection. *Marshall v. Ross*, 8 *L. R. Eq.*, 651; 17 *W. R.*, 1086; *Stewart v. Smithson*, 1 *Hilton*, 119.

Registry of foreign trade-mark.

480. To enjoy the protection afforded by this Title, in any nation other than that in which the claimant is domiciled, the trade-mark must be registered in such nation, with a statement of the following particulars:

1. The name of the party who desires the protection of the trade-mark, and his residence and place of business;

2. The class of merchandise, and the particular description of goods comprised in such class, for which the trade-mark has been or is intended to be appropriated;

3. A description of the trade-mark itself, with a *fac-simile* thereof, and the mode in which it has been or is intended to be applied and used; and,

4. The length of time, if any, during which the trade-mark has been used.

Act of Congress of the United States, July 8, 1870, § 77.

This leaves it to each nation to protect domestic trade-marks to such extent as may be deemed suitable. Thus, in France, certain tradesmen in particular cities enjoy the exclusive use of a mark peculiar to articles of their trade produced in that city.

Declaration.

481. There must also be filed in the same office with the registry, a declaration, under the oath of the party or his agent, to the effect that the claimant has a right to the use of the same in such nation, and that no other person or corporation has a right to its use there ; and that the description and *fac-simile* presented for registry are true.

Offices where registry is to be made.

482. The registry of trade-marks under this title, in each nation, is to be made in the offices of the chief secretary of state for the interior or home department, and in such others as shall from time to time be designated by the legislative authority of the nation.

In the HANSEATIC CITIES, the tribunal of commerce is designated as the place of registry.

Treaty of commerce and navigation between France and the Free Cities of Lubeck Bremen and Hamburg, March 4, 1865, Art. XXIV., (9 *De Clercq*, 187, 195.)

In the NETHERLANDS, two copies in the registry of the tribunal of the arrondissement at Amsterdam.

Treaty of commerce and navigation between France and the Netherlands, July 7, 1865, Art. XXIV., (9 *De Clercq*, 337, 343.)

In AUSTRIA, two copies in the chamber of commerce of Vienna.

Treaty of commerce between France and Austria, December 11, 1866, Art. XII., (9 *De Clercq*, 646, 649.)

In the Grand Duchy of BADEN, "au bureau bailliage de la ville du Carlsruhe."

Convention between France and the Grand Duchy of Baden, July 2, 1857, Art. II., (7 *De Clercq*, 298.)

In RUSSIA, in the department of manufactures and internal commerce, at St. Petersburg.

Treaty of commerce and navigation between France and Russia, Art. XXII., (7 *De Clercq*, 278, 286.)

In PORTUGAL, at the registry of the tribunal of commerce de première instance.

Convention between France and Portugal, April 12, 1851, Art. XVII., (6 *De Clercq*, 101, 107.)

In FRANCE, in the registry of the tribunal of commerce [of the Seine.] or the council of prud'hommes.

¹ Treaty or convention between France and

Free Cities of Lu- beck, Bremen & Hamburg,	}	Mar. 4, 1865, Art. XXIV., 9 <i>De Clercq</i> , 187, 195

Netherlands,	July 7, 1865, “	XXIV., 9 <i>Id.</i> , 337, 343.
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Austria,	Dec. 11, 1866, “	XII., 9 <i>Id.</i> , 646, 649.
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Grand Duchy of Baden,	}	“	II., 7 <i>Id.</i> , 298.

Russia,	June 14, 1857, “	XXII., 7 <i>Id.</i> , 278, 286.
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The convention between France and Portugal, April 12, 1851, Art. XVII., (6 *De Clercq*, 101,) designates the registry of the tribunal of the Seine.

The Act of Congress of the United States concerning “patents,” July 8, 1870, provides for the registration of trade-marks in the Patent Office in Washington, D. C.

Equal privileges of foreigners.

483. Every nation party to this Code, which provides for the registration of domestic trade-marks must allow, upon the same terms and with the same effect, the registration of foreign trade-marks by members and domiciled residents of the other nations.

TITLE XIX.

COPYRIGHTS.

The International Copyright Congress, held at Brussels in 1858, resolved:

1. On the principle of an international recognition of property in works of literature and art, in favor of their authors;
2. This principle ought to be admitted, even in the absence of reciprocity;
3. Foreign authors should be on the same footing as native;
4. Additional formalities should not be required of foreign authors; it should be enough to comply with the formalities of the law of the place of first publication;
5. It is desirable that all countries should adopt legislation on an uniform basis.

France (says Blaine, in paper in *Transactions of National Association for Promotion of Social Science*, 1862, p. 868,) has adopted the first four rules, and alone has dispensed with conditions of reciprocity.

Under the French law it is unlawful, without the permission of the author, to publish a work already published in a foreign country with which no copyright convention exists. *Copinger on Copyright*, ch. XVIII., p. 240.

The principal French conventions are with

Austria,	Dec. 11, 1866, 9 <i>De Clercq</i> , 664.
Pontifical States,	July 14, 1867, 9 <i>Id.</i> , 731.
Portugal,	July 11, 1866, 9 <i>Id.</i> , 593.
Grand Duchy of Luxembourg,	Dec. 16, 1865, 9 <i>Id.</i> , 416.
Hanover,	July 19, 1865, 9 <i>Id.</i> , 366.
Duchy of Nassau,	July 5, 1865, 9 <i>Id.</i> , 332.
Grand Duke of Hesse,	June 14, 1865, 9 <i>Id.</i> , 310.
Grand Duchy of Mecklenburg- Schwerin,	June 9, 1865, 9 <i>Id.</i> , 303.
Mecklenburg- Strelitz,	Sept. 19, 1865, 9 <i>Id.</i> , 372.
Saxony,	May 26, 1865, 9 <i>Id.</i> , 286.
Baden,	May 12, 1865, 9 <i>Id.</i> , 244.
Frankfort,	Apr. 18, 1865, 9 <i>Id.</i> , 232.
Bavaria,	Mar. 24, 1865, 9 <i>Id.</i> , 222.
Belgium,	May 1, 1861, 8 <i>Id.</i> , 264.
Prussia,	Aug. 2, 1862, 8 <i>Id.</i> , 495.

—(extended to) Electorate of Hesse, 9 *Id.*, 205; Principalities of Reuss, 9 *Id.*, 221, 283; of Schwartzburg-Rudolstadt, and of Schwartzburg-Sondershausen, 282; of Waldeck and Pyrmont, 284; of Lippe and of Anhalt, 373; of Lippe Detmold, 470; of Schaumbourg Lippe, 471; to the Duchies of Saxe Altenbourg, 228; of Brunswick, 232; of Saxe Coburg Gotha, 285; of Anhalt Dessau, 472; and to Hesse Hornbourg, 284.

England has international copyright conventions (less complete and liberal than those of France,) with Prussia, France, Italy, Belgium, Spain, and some other Powers.

ARTICLE 484. Ownership of products of the mind.

- 485. Transfer.
- 486. Subsequent inventor, author, &c.
- 487. Private writings.
- 488. Correspondence addressed to public offices.
- 489. Right of protection.
- 490. Extent of protection.
- 491. Translations.
- 492. Extracts from newspapers and periodicals.
- 493. Power to prohibit works.
- 494. Saving clause as to existing works.

Ownership of products of the mind.

484. The author of any product of the mind, whether it be an invention, or a composition in letters or art, or a design, with or without delineation, or other graphical representation, has an exclusive ownership therein, and in the representation or expression thereof; and the sole right to copy the same or reproduce it in any form, subject to the provisions of this Title.

The Civil Code, reported for New York, § 429.

This provision establishes an international recognition of property in works of literature and art, in favor of their authors, and without reference to reciprocity (except to the extent to which all provisions of this Code are reciprocal,) which are the first two principles agreed upon by the International Copyright Congress of Brussels, of 1858.

The Civil Code, reported for New York, (§ 430,) also provides for joint ownership.

It has been recently held in the New York Superior Court, that the common law right of the author of a dramatic composition is not affected by the ordinary public representations, and that a spectator's reproducing the composition from memory was an infringement. *Palmer v. De Witt*, 40 *Howard's Pr. (New York) Rep.*, 293.

Transfer.

485. The author of any product of the mind, or of any representation or expression thereof, may transfer his property in the same, or any part thereof, and thereupon the property transferred becomes subject to further transfer like other property.

The Civil Code, reported for New York, § 431.

Subsequent inventor, author, &c.

486. If the owner of a product of the mind does not make it public, any other person subsequently and originally producing the same thing has the same right therein as the prior author, which is exclusive to the same extent against all persons except the prior author, or those claiming under him.

The Civil Code, reported for New York, § 433.

Private writings.

487. Subject to the next article, letters and other private¹ communications belong to the person to whom they are addressed and delivered;² but they cannot be published against the will of the writer,³ except by authority of law.

The Civil Code, reported for New York, § 434.

See *Woolsey v. Judd*, 4 *Duer's (New York) Rep.*, 389, and cases there cited; *Eyre v. Higbee*, 35 *Barbour's (New York) Rep.*, 502.

Compare *Copinger on Copyright*, ch. II., p. 24, and authorities cited in note (d.)

¹ Communications received from correspondents by editors or proprietors, (if sent expressly or impliedly for the purpose of publication,) become the property of the person to whom they are directed, and cannot be published by any other person obtaining possession of them; nor by such editor or proprietor, if, previous to publication, the writer expresses a desire to withdraw them. *Copinger on Copyright*, ch. II., p. 32.

² The difficulty in defining the rule upon this subject arises from the fact that two rights are involved: First, the ownership of the document, with the incidental advantages attaching to the personal control of it as a repository of the information communicated,—such, for instance, as the right to use it as evidence, or to destroy it, (see *Eyre v. Higbee*, 35 *Barbour's (New York) Rep.*, 502, 513,)—this ownership is protected by the same rules that apply to other chattels; Second, the right of property in the product of mind embodied in the document, and which remains in the author when the communication is private, that is to say, not intended for publication—a right which extends to the control, not of the document as a thing, but to controlling the reproduction of the form in which

thought is embodied in it—a right which becomes important in proportion to the value of the mental product.

³ It may be a question whether the affirmative consent of the writer, or his personal representatives or assigns, should not, in strictness, be made the condition.

Correspondence addressed to public offices.

488. The government of a nation has the right to publish or withhold all letters addressed to its public offices.

Curtis on Copyright, 98.

Right of protection.

489. Any nation may prescribe the formalities requisite to the enjoyment of copyright within its jurisdiction, and may limit the copyright to any period not less than twenty-five years, but for such period the rights of an author, as defined by article 484, must be protected by the laws of every nation.

Extent of protection.

490. The same protection, even beyond that secured by the last article, which the copyright laws of any nation extend to its own members, or to works produced or first published within its limits, must be extended, upon the same terms, to the members of the other nations, and to works produced or first published therein; except that, to secure for a work first published in one nation protection in another, the time for registering it in the latter may be limited to three months, and a deposit of a foreign copy may be required.

The European copyright treaties,—of which there are a number, uniting France with Great Britain, Austria, the German States, Portugal, Belgium, Switzerland, Russia, the Pontifical States, the Netherlands, and other countries,—are generally framed by enumerating what classes of works are protected, and by prescribing the method of registration for copyrighting a foreign work.

The following resumé of the treaty between Great Britain and France, Nov. 3, 1851, affords an indication of the provisions common in these treaties :

The authors of works of literature and art published in England shall have the same protection in France as French authors have there, and *vice versa*.

Works of literature and art are understood to comprehend books, dramatic works, musical compositions, drawings, paintings, sculptures, engravings, lithographs, and any other production whatsoever of literature or the fine arts.

The protection granted to original works is extended to translations; it being, however, clearly understood that protection is afforded simply to a translator in respect of his own translation, and not to confer the exclusive right of translating upon the first translator of any work.

If the author of any work published in either country wishes to reserve to himself the exclusive right of translating his work in the other country, he may do so for five years from the first publication of the translation authorized by him, on complying with the following conditions:

1. The original work must be registered and deposited in the one country within three months after the publication in the other.

2. The author must notify, on the title-page of his work, his intention to reserve the right of translation.

3. At least a part of the authorized translation must appear within a year after the registration and deposit of the original, and the whole must be published within three years after the date of such deposit.

4. The authorized translation must appear in one of the two countries, and be registered and deposited in the same way and within the same time as an original book.

With reference to works published in parts: each part is to be treated as a separate work, and registered and deposited in the one country within the three months after its first publication in the other, and a declaration by the author to the effect that he reserves the right of translation in the first part, will be sufficient.

Dramatic works and musical compositions are protected in France to the same extent as in England. The translation of a dramatic work, however, must appear within three months after the registration and deposit of the original.

This protection is not intended to prohibit fair imitations or adaptations of dramatic works to the stage in England and France respectively, but is only designed to prevent piratical translations. And the question, what is an imitation or a piracy, is in all cases to be decided by the courts of justice of the respective countries, according to the laws in force in each.

Extracts from newspapers and periodicals may be freely taken from either country, and republished or translated in the other, if the source whence they are taken be acknowledged, unless the authors of the articles shall have notified in a conspicuous manner, in the journal or periodical in which such articles have appeared, that they prohibited the republication or translation thereof.

This stipulation, however, does not apply to articles of political discussion.

Importation of pirated copies is prohibited, and in the event of an infraction of this prohibition, the pirated works may be seized and destroyed.

In order to obtain protection in either country, the work must be registered in the following manner:

If the work first appear in France, it must be registered at Stationers' Hall, London,—if it appear first in England, at the Bureau de la Librairie of the Ministry of the Interior at Paris,—within three months after the first publication in England. As to works published in parts, they must be registered within three months after the publication of the last part; but in order to preserve the right of translation, each part must be registered within three months after its publication. A copy of the work must also be deposited within the same time as registration is to be made, either at the British Museum in London, or in the National Library in Paris, as the case may be.

The certified copy of the entry in either case is evidence of the exclusive right of publication in both countries until the contrary is proved.

With regard to articles other than books, maps, prints, and musical compositions, in which protection may be claimed, any other mode of registration, which may be applicable by law in one of the two countries to any work or article first published in such country, for the purpose of affording protection to copyright in such article, is extended on equal terms to any similar article first published in the other country.

See, also, convention between Great Britain and

Prussia, June 4, 1855, } *Accounts and Papers*, 1856, vol. LXI., (24.)
 (Additional to convention of May 13, 1846.)

Belgium, Aug. 12, 1854, *Id.*, 1854-5, vol. LV., (26.)

Article 490 above, however, seems to present an equally efficacious and more simple rule; and the right of aliens to avail themselves like citizens of the copyright laws being thus conceded, all the proper legal remedies are assured, as in other cases, by the provisions of Part VI., respecting THE ADMINISTRATION OF JUSTICE.

No distinction is made in France, between foreigners and French subjects, as to copyright, provided they make the necessary deposit. All kinds of unpublished works, lectures, &c., are the exclusive property of their authors. *Levi's Commercial Law*, vol. II., p. 581; *Copinger on Copyright*, ch. XVIII., p. 239.

Mr. Blaine suggests that an uniform system of registration and international exchange of records be adopted, so that registry, according to the law of the State of first publication, will be followed by transmission of the record to the other nations, and consequent protection there. *Transactions of National Association for Promotion of Social Science*, 1862, p. 869.

The drafted treaty between Great Britain and the United States, 1853, contained a provision that when a foreign work is copyrighted the edition must be as cheap as the cheapest foreign edition.

Translations.

491. Copyright includes the right of translation into other languages ; but, in order to preserve such right, the intention to do so must be announced upon the title page of each volume, and of each part, if published in

parts, and the publication of a translation must be commenced within one year from the publication of the original.

Unless the right of translation is secured under this article, any translator may have a copyright of his translation.

See the convention between France and Austria, Dec. 11, 1866, Art. IV., (9 *De Clercq*, 664,) and those with the German States, 1865, 9 *Id.*

And see note to Article 490, concerning translations of dramatic works.

The French conventions with Portugal and several of the German States contain a provision that the author of a dramatic work, who would reserve the exclusive right of translation and of representation, must publish his translation, or produce the piece on the stage within three months after the formalities of copyright.

Extracts from newspapers and periodicals.

492. Extracts from newspapers and periodicals published in one nation may be freely republished or translated in another, if the source whence they are taken be acknowledged ; except that the author or publisher of an article not involving political discussion may reserve strict protection by a conspicuous notice published with the article.

See note to Article 490, and the conventions there referred to.

To the same effect are the conventions between France and Austria, Portugal, German States, Pontifical States, and Russia.

Power to prohibit works.

493. The provisions of this Title are subject to the power of any nation to control or prohibit the importation, sale, circulation or publication, within its territorial limits, of any work or production.

This qualification is usual in the treaties, to reserve the ordinary measures of police, and also any obligations arising out of agreements with other nations by which particular works may have been prohibited.

Saving clause as to existing works.

494. The provisions of this Title do not prevent the continuation of the publication or sale in any nation of works already in part or wholly published therein.

The convention between France and Portugal qualifies this provision by adding that no further publication can be made other than necessary to complete orders or subscriptions already commenced. In the treaty between France and Russia, the saving clause extends to works to be published within one year.

TITLE XX.

MONEY.

- ARTICLE 495. Adjustment of accounts between nations, and between members of different nations.
496. The money of account to follow the law of decimal subdivision.
497. Gold to be the standard.
498. The standard of fineness prescribed.
499. Definition of the money unit.
500. What gold coins shall be legal tender.
501. Silver coinage.
502. What silver coins shall be legal tender.
503. Limits of variation from standard weight or fineness within which coins shall be current.
504. Standard weights.
505. Scrutiny of the coinage.
506. Coins may be called in by proclamation.
507. Uncurrent coins may be destroyed.
508. Coins of base metal not to form a part of the international currency.

Adjustment of accounts between nations, and between members of different nations.

495. All accounts and transactions between the nations, and between the members of different nations, involving money, shall be rendered and settled in terms of the unit of money established by this Code, and of its subdivisions.

The first of the propositions agreed upon by the international monetary convention held in Paris, in 1867, declared that "an identical unity" ought to be established between the gold coins of all nations. Identity in the common money unit does not necessarily require uniformity of coinage, though the coins should stand in such simple relations to the unit that all the larger national coins may have an international circulation. In this manner the system of coinage which is found to be practically the most convenient will ultimately prevail, and secure universal acceptance.

The money of account to follow the law of decimal subdivision.

496. The denominations of money higher and lower

than the unit, shall be decimal multiples and sub-multiples of the unit.

The conclusive argument in favor of the decimal system of money weights and measures is, that this is the system of our arithmetical numeration, and that by its adoption abstract and concrete values are reduced to a common form of expression. If it were practicable, in abstract arithmetic, to introduce a different law of increase, a more convenient ratio might possibly be found than the decimal, but no advantage which could be secured by the adoption of such a ratio in the affairs of life, can be a compensation for the great disadvantage which accompanies any departure from the law of numbers. This consideration determined the adoption of the decimal division in the metrical system of money, weights and measures, and in the American system of money.

Coins may be struck, according to convenience, of multiples, and sub-multiples, of the unit, not decimal.

Gold to be the standard.

497. The monetary standard shall be gold only.

The principle of a double standard is illogical. It assumes that law can make a relation permanent which nature has made variable. In defence of the double standard it has been argued by some authorities, and notably by Mr. *Wolowski*, at the international conference of 1867, that such a standard tends to maintain greater stability in the measure of value, by preventing a serious disturbance of prices on occasion of an abnormal scarcity of one or the other of the precious metals. Practically, however, where a double standard has existed, the effect has been to induce a debasement of the coinage in that metal of which the market value exceeds the legal. Accordingly, though at the time of the international conference of 1867 a double standard actually existed in a number of the States represented, the conference was unanimous in favor of a single standard; and though in all but two of these twenty States the existing standard was either silver, or both silver and gold, the conference pronounced with equal unanimity for gold only. This metal is recommended by its superiority of value over silver of equal bulk or weight, and its consequently greater portability, and by the fact that it is practically already, in Europe and America, the medium of all large monetary transactions.

The standard of fineness prescribed.

498. The standard quality, or degree of fineness, of the metal employed in coinage, shall be nine parts of pure gold to one part of alloy.

The existing diversity among the coins of different nations, as it respects alloy, is very great. For gold coins, the standard fineness above proposed has been adopted by France, Belgium, Switzerland, Italy, the United States, Prussia, Bavaria and Spain; also by Austria, for her crown and half-crown, and by Holland, for her double William, and its submultiples. For her ducat and double ducat, Holland employs an alloy con-

taining fifty-nine parts of pure gold out of sixty of total weight. Austria, for the coin of the same name, prescribes a fineness of seventy-one parts out of seventy-two, which is the quality of metal used also by Würtemberg for her gold coins.

Great Britain, Portugal, Brazil and Turkey employ a standard consisting of eleven parts of pure gold out of twelve in total weight; and Sweden, one of thirty-nine parts out of forty. Elsewhere, the standard falls below nine-tenths; being lowest in Egypt, where it consists of seven parts of pure gold out of eight of total weight. *Official Report on the International Exposition of Coins, Weights and Measures of 1867.*

The fineness of silver coins is equally various. For their larger coins, France, Belgium, Switzerland, Italy, Prussia, Bavaria, Würtemberg, Baden, Hesse, Austria, Spain and the United States adhere to the standard of nine-tenths. England employs thirty-seven fortieths, and Holland 945-1000. Elsewhere, generally, a lower standard, of varying fineness, prevails; and as a rule, in all countries the subsidiary silver coinage is debased below nine-tenths. *Report above cited.*

Some of these irregularities will necessarily disappear, in the natural course of events. A single monetary system will no doubt soon replace the diversities which are at present found in the German States; and the standard of Prussia and Bavaria will prevail throughout the empire. By far the larger part of the coinage of the world (that of Great Britain being for the moment put out of the question) is therefore now, or will shortly be, conformed to the standard fineness of nine-tenths, as it respects both gold and silver. The delegates of Great Britain, at the international conference of 1867, assented to the expediency of conforming the British coinage in future to the same standard. *Report of the British Delegates to the International Monetary Conference.*

It is in favor of this compound, that it is superior to most others, and to the pure metal, in point of hardness, and is therefore conducive to the durability of the coinage.

Since the value of coin is estimated according to the weight of fine metal which it contains, the base metal forming the alloy being accounted as worth nothing, it would be quite possible to have coins identical in value while differing both in appearance and in weight. Such coins would lack the qualities essential to secure to them an international circulation; and beyond the limits of the States by which they were issued, they would be regarded as foreign, and would be received with hesitancy.

Their variety would also increase the difficulty of distinguishing the genuine from the spurious. Moreover, in making payments it would be impossible to transfer coin from hand to hand by weight, in case the coins of different countries were mixed; a circumstance which in itself would be found to be a great disadvantage.

In order, therefore, that there may be created a coinage truly international, it is indispensable that there should be universally adopted an uniform standard of fineness in the metal employed.

In these considerations there is likely to be found an obstacle to the probably successful working of a plan proposed in 1870 by the govern-

ment of the United States to the governments of Europe, through a circular dispatch of the Secretary of State to the ministers of the United States resident abroad, the object of which was to avoid the difficulties attendant on the immediate creation of an international coinage for universal and exclusive use, by effecting, what is called in the dispatch, an *assimilation* of the several national coinages. In order to this, the plan proposed that the existing gold coins of all nations should be retained under the same denominations as at present; but that they should be slightly modified in weight, so that the weights of fine gold contained in them should be exact multiples of a certain assumed unit weight. The unit weight suggested was one decigramme of fine gold. This plan would make the values of the gold coins of the several nations commensurable with each other; but the ratios of commensurability which it would introduce would lack the desired simplicity; and the diversity of the alloys in use would prevent any national coinage from securing an extensive international circulation.

Definition of the money unit.

499. The unit to be taken as the basis of the international monetary system, shall be called a dollar; and shall be of the value of one and a half grammes of fine gold, or five tergrammes¹ of standard gold.

¹ The word tergramme, formed on the principles of the metric nomenclature, signifies one-third of a gramme.

In the determination of a unit to serve as the basis of the system, the choice lies between three possibilities:

1. To take for the purpose some value totally different from that of any existing coin or denomination of money, by the adoption of which all monetary systems at present existing will be superseded.

2. To take some coin or denomination of money actually existing; that is, to take some type which is at present simply national, and to make it universal.

3. To take some value which, in itself, or in its multiples or submultiples, shall so nearly approach the principal coins of the nations embracing the largest population, and most largely engaged in conducting the world's exchanges, that these, by means of inconsiderable changes, may be accommodated to it.

On purely theoretical grounds, the first of the expedients here presented is preferable to either of the others. Coins must be adjusted by weight; and in the absence of any actual system of coinage, it would be advisable to make the unit of money identical with the unit of weight, or with some simple subdivision of that unit.

Supposing the metric system of weights to be legalized, the absolute weight of any mass of standard metal, coined or uncoined, would thus have the same numerical expression as the absolute money value; or these expressions would differ only in the place of the decimal point.

In the actual state of things, however, it is to be borne in mind that the habits of thinking of all peoples, in regard to objects of value, have been

formed upon their existing monetary systems, and that the prices of all commodities have been adjusted in accordance with the denominations of money in daily use. While, therefore, it is desirable that the unit of money should be related to the unit of weight in as simple a ratio as practicable, it must be considered that any scheme which shall break up all these familiar associations, will be unacceptable to practical men; so that, whatever may be its merits in a point of view purely scientific, it will probably fail of success. It is also to be borne in mind that the amount of gold and silver coin now in existence cannot be less than \$2,500,000,000;* and that if a plan of monetary unification can be de-

*. The total amount of coin existing can only be matter of estimate. The amount assumed above is the estimate of Mr. *McCulloch*, in his article on the "*Precious Metals*," in the *Encyclopædia Britannica*. Mr. *McCulloch* names, in a note appended to the article cited, the numerous authorities upon which he has founded his conclusion. He gives to Great Britain £70,000,000 or £75,000,000, as representing the gold and silver currency, and the reserves in the banks. Professor *Jevons*, in a recent communication (1868) to the Statistical Society of London, puts the gold coin in sovereigns and half-sovereigns, at £80,000,000; and Mr. *Miller*, of the Bank of England, cited by Dr. *Farr*, in his report to the international Statistical Congress at the Hague, (1869,) maintains that it cannot be less. As Professor *Jevons* puts the silver coinage of Great Britain at £14,000,000, his estimate for the total amount of gold and silver coin existing in Great Britain is £94,000,000, exceeding that of Mr. *McCulloch* very materially.

Mr. *McCulloch* gives to France £130,000,000, or £140,000,000; making for the two countries, Great Britain and France, £200,000,000, or £215,000,000; say \$1,050,000,000. For the rest of Europe, for North and South America, for Australia, for the Cape of Good Hope, and for Algeria united, he supposes the amount may be in the neighbourhood of £300,000,000; so that, for all the world, excluding Asia and the African States, except Algeria, the total is probably between £490,000,000 and £510,000,000; that is to say, £500,000,000, or \$2,500,000,000.

Mr. *S. B. Ruggles*, of New York, delegate of the United States to the international monetary conference at Paris in 1867, in a written argument addressed to that body in favor of the coinage of a gold piece of the value of twenty-five francs, stated the total amount of the United States gold coinage up to 1866, at \$845,500,000, of which he assumed that \$300,000,000 still exists in the country. He gave the total of gold coin existing in France, Belgium and Italy, according to the estimates of M. *de Parieu* and other distinguished publicists, at \$1,400,000,000; and he assumed that in all Europe the total would not be less than \$1,800,000,000. This estimate seems moderate, when we consider that Mr. *McCulloch* cites as probable an estimate for Russia only, of about \$270,000,000; and consider further, that there remain Spain, Portugal, Holland, Denmark, Sweden, Norway, Switzerland, Austria and Germany still to be accounted for.

Taking, however, the estimates of Mr. *Ruggles* for continental Europe, at \$1,800,000,000, and for the United States, at \$300,000,000, along with those of Messrs. *Jevons* and *Miller*, for Great Britain, of say \$500,000,000, we have already a total of \$2,600,000,000; without considering Mexico, the British Possessions in North America, the West India Islands, Central America, South America, Australia, the Cape, and Algeria, for which it would be a low estimate to suppose that they have among them \$400,000,000. The amount, therefore, assumed above as the total of the gold and silver coinage of European nations, and of nations and colonies of European origin, still actually existing, is probably considerably below, rather than above, the real amount.

vised under which a large portion of this great sum may still be employed to subserve the purposes of money without recoinage, this consideration will weigh heavily in its favor.

It happens that the relations of the representative coins of France, the United States and Great Britain, form nearly a geometrical series. This fact has led to a number of suggestions, all contemplating the possibility of bringing these coins, and through them the monetary systems of the three countries, into complete harmony, without entailing any serious inconvenience upon the peoples concerned. Such a result might be reached by adopting the second or the third of the possible modes of unification pointed out above; that is to say, by taking the franc, the pound sterling, or the dollar, at the actual value of the coin chosen, as the money unit; or, on the other hand, by assuming a value having metric relations, unlike any one of these coins, but capable, by slight changes in their several values, of being brought into harmony with all of them.

It is an objection to the adoption of the franc, the sovereign, or the dollar, at the precise values which now belong to these coins by law, that the weight of no one of them is expressible in an exact number of grains or of grammes, or even in a number of grains or of grammes embracing only simple fractions. Notwithstanding this very serious objection, the international conference at Paris did not hesitate to recommend, with a near approach to unanimity, that the French gold piece of five francs, of the metric weight of gr. 1.612903, should be made the basis of an international system of money. To this weight it was proposed to reduce the American dollar, from its present metric weight of gr. 1.671813; a reduction which would diminish its value a little more than three and a half per cent.; and to accord with this, it was likewise proposed to coin the British sovereign of the metric weight of gr. 8.064515, with a fineness of nine-tenths, instead of gr. 7.98805, as at present, of the fineness of eleven-twelfths, (the British standard,) which is equivalent to a weight of gr. 8.13598, of the fineness of nine-tenths; by which change its value would be reduced 88-100 of one per cent.

The argument which seems to have decided the conference in favor of this proposition, was the fact that the French system of coinage is now the system also of Belgium, Switzerland and Italy as well, by virtue of a monetary treaty concluded December 23, 1865, which is to remain in force until January 1, 1880, and longer, if not sooner repealed. A system which had already secured acceptance with half Europe, (excluding Russia and the Scandinavian States,) and which is represented by an actual coinage of no less value than \$1,400,000,000, or \$1,500,000,000, was presumed to be too strongly rooted to be superseded even by a better one; and impressed with this conviction, the conference believed that Great Britain and the United States would be constrained to adopt the same system, and thus determine its ultimate adoption by all nations.

A request was therefore presented to the government of France, to invite all the governments which were represented in the conference, to signify, on or before the 15th day of February, 1868, their willingness to

adhere to the basis proposed, or the contrary. Up to the present time it is not known that any notices of adhesion have been sent in.*

In Great Britain, a royal commission reported upon the proposition, in July, 1868, unfavorably; and the efforts which have been repeatedly made to secure a more favorable result in the American Congress have thus far failed. There is no prospect, therefore, that the plan proposed by the conference can soon command acquiescence from any nations beyond those which have already committed themselves to its temporary use.

Its adoption, had it succeeded, would have established a permanent discordance between the system of coinage and the metric system of weights and measures; and on that account its failure is by no means to be regretted. The fact, moreover, seems to be, that the entire body of the coinage of gold and silver which has been issued from the French mints on this basis is below the legal standard in regard both to fineness and to weight.† (*Director U. S. Mint Rep't. for 1867. Baron Eugene Nothomb in Prussian Annals.*) So that, in its present condition, it could never be received as part of an international coinage. The argument, therefore, drawn from its large amount, falls to the ground.

Neither the pound sterling, nor the dollar, nor any other existing coin, except the piece of five-francs, has been proposed unconditionally as the basis of an international coinage. The delegates from Great Britain to the international conference suggested the idea of a ten-franc piece having the value of eight shillings sterling, to serve as a monetary unit, on the ground that this would be more likely to secure acceptance in England than the unit of half that value proposed by the conference; but this suggestion received no support.

All the remaining propositions as yet made with regard to the monetary unit recognize the necessity of deviating, at least to some degree, from the actual weight and value of any existing coin; but they all aim at the same time to avoid so large a deviation as to render the entire coinage of the world, or even a great part of it, unavailable for the uses of money. The most noteworthy of these propositions may be enumerated as follows:

1. To make the dollar the unit, giving it the weight of 1.62 grammes of standard gold, nine-tenths fine.‡
2. To make the dollar the unit, giving it the weight of 1.2-3ds grammes of standard gold, nine-tenths fine.§

* This remark is to be understood of the plan of the Paris conference *in full*. The adoption of a single standard, and of gold only as the standard, constituted an essential part of this plan; and to this France herself has not yet acceded. A disposition to accept the five franc gold unit has, however, been manifested by Spain, Sweden, Austria, Roumania and Greece; as well as by the nations parties to the monetary treaty of December 23, 1865, to whom, of course, this part of the plan is acceptable.

† It is but just to add that these imputations upon the character of the gold coinage of France are said to have been more recently denied by the officers in charge of the French mint in Paris.

‡ Proposition of Mr. *George F. Dunning*, Sup't U. S. Assay Office, New York City; Letter to Mr. *Dubois*, U. S. Mint at Phila., Feb. 8, 1868.

§ Plan of Mr. *E. B. Elliott*. *Am. Assoc'n Adv. Sci.*, August, 1868.

3. To take as a unit the value of one gramme of standard gold, nine-tenths fine, to be called a sol, or soldo.*

4. To take as a common measure of value, one decigramme of pure gold.†

To consider these propositions in their order:

In favor of the first, it is urged that it would only require, in the British gold coins, a change of 44-100ths of one per cent., and in the French gold coins, an opposite change of precisely the same small amount, to reconcile them with the Federal coinage; but the Federal coinage, on the other hand, would require to be reduced 3.1-10th per cent. It is unfortunate, also, that the change required by this plan, in French gold, is in the direction of increase of weight, while the whole mass of the French coin existing is below standard weight already. The proposer of this plan considers it a recommendation that it provides a coinage in which the weights are expressed by round numbers of grains; the unit weight, 1.62-100ths grammes, being the equivalent, within an infinitesimal fraction, of 25 grains. This relation is, however, unimportant, since it is to be desired that grain-weights shall cease to be used as soon as possible.

The second proposition is that which has been adopted in the foregoing Article. Its advantages are, first, that it furnishes a unit bearing a simple relation to the system of metric weights, but which is yet so nearly identical with the dollar of the United States (about 3-10ths of one per cent. less) as to require no account to be taken of the difference.

It presents, secondly, points of near approach to the monetary systems of the nations in every part of the world, whose populations are most numerous, and whose commerce contributes most largely to the increase, of the world's wealth. As a unit of account, it is furthermore likely to prove more generally acceptable than the much larger unit presented in the pound sterling, or the much smaller one represented by the franc.

And, finally, it is a consequence of the long-continued and extensive use in past time of the Spanish dollar, with which this unit is nearly identical, and of the fact that the dollar is to-day the unit actually employed in the commercial dealings of nearly four hundred millions of people, (*Dispatch of Secretary Fish, cit. supr.*) that the adoption of this coin as the basis of the international monetary system will introduce no novelty, and will therefore require but little effort to make the system universally intelligible.

The following table has been calculated from data found in the "Catalogue Officiel" of the Exposition of Weights, Measures and Moneys, Paris, 1867, and in the Report of the Secretary of the Treasury of the United States for 1867; together with information furnished by *E. B. Elliott*, Esq., Statistician, U. S. Treasury Department.

* Mr. *Michel Chevalier*, in the *Journal des Economistes*, Nov., 1868, proposes a gramme of gold of nine-tenths fine as the unit, or a decimal multiple of the gramme. Dr. *William Farr*, delegate from Great Britain to the Statistical Congress at the Hague, in 1869, in a report made to that Congress, approves this idea, but strongly advocates the decagramme of nine-tenths fine as the unit, which he would call the *Victoria*.

† Proposition of Secretary *Fish*, in Circular Dispatch to U. S. Ministers abroad, in 1870.

Relations of the Metric Dollar to the principal Gold Coins of Europe, America, North Africa and Japan.

Country.	Coin.	Fineness.	Present weight in grammes.	Weight reduced to 9-10 Fineness.	Proposed Weight.	Amount of change proposed.	Per cent. of change proposed.	Value of coin ref'd to international unit.
United States	Double Eagle....	$\frac{900}{1000}$	33·436	33·436	33·333	—0·103	—0·31	20·00
"	Eagle.	"	16·718	16·718	16·666	—0·052	—0·31	10·00
"	Half Eagle.....	"	8·359	8·359	8·333	—0·026	—0·31	5·00
"	Dollar	"	1·672	1·672	1·666	—0·005	—0·31	1·00
Great Britain	Sovereign.....	$\frac{916.7}{1000}$	7·988	8·136	8·333	+0·197	+2·43	5·00
"	Half Sovereign ..	"	3·994	4·068	4·166	+0·098	+2·43	2·50
France.....	Napoleon.	$\frac{900}{1000}$	6·452	6·452	6·666	+0·215	+3·33	4·00
"	Piece of 10 Francs	"	3·226	3·226	3·333	+0·107	+3·33	2·00
Muntzverein.	Triple Crown....	"	33·333	33·333	33·333	0·000	0·00	20·00
"	Crown	"	11·111	11·111	11·111	0·000	0·00	6·67
Spain	Doubloon.....	"	8·387	8·387	8·333	—0·054	—0·64	5·00
"	Piece of 4 Escudos	"	3·355	3·355	3·333	—0·022	—0·65	2·00
"	Piece of 2 Escudos	"	1·677	1·677	1·666	—0·011	—0·65	1·00
Holland.....	Ten Gulden.. ...	"	6·729	6·729	6·666	—0·063	—0·94	4·00
"	Ducat.....	$\frac{983}{1000}$	3·494	3·817	3·750	—0·067	—1·78	2·25
"	Ryder	"			10·000			6·00
"	Half Ryder.. ...	"			5·000			3·00
Portugal.....	Coroa.....	$\frac{916}{1000}$	17·783	18·099	18·333	+0·234	—1·29	11·00
Austria.....	Ducat.....	$\frac{986}{1000}$	3·483	3·817	3·750	—0·067	—1·78	2·25
Denmark	Piece 10 Thaler ..	$\frac{595}{1000}$	13·281	13·207	13·330	+0·126	+0·95	8·00
Sweden.....	Ducat.....	$\frac{975}{1000}$	3·452	3·740	3·750	+0·010	+0·27	2·25
Russia.....	Polou Imperial ..	$\frac{880}{1000}$	6·532	6·387	6·333	—0·054	—0·85	3·80
Mexico	Doublon (new) ..	$\frac{866}{1000}$	26·982	25·963	25·833	—0·130	—0·50	15·50
"	Piece 20 Pesos...	$\frac{875}{1000}$	33·778	32·840	33·333	+0·490	+1·49	20·00
Bolivia..	Doublon	$\frac{870}{1000}$	26·967	26·068	25·833	—0·235	—0·90	15·50
Ecuador.	Piece 4 Escudos..	$\frac{844}{1000}$	13·468	12·630	12·500	—0·130	—1·03	7·50
Brazil.....	Piece 10 Milreis..	$\frac{916}{1000}$	8·963	9·122	9·166	+0·044	+0·48	5·50
Peru	Piece 20 Soles....	$\frac{898}{1000}$	32·192	32·120	33·333	+1·213	+3·77	20·00
Chili	Piece 10 Pesos...	$\frac{900}{1000}$	15·303	15·303	15·000	—0·303	—1·98	9·00
Turkey.....	Piece 100 Piastres	$\frac{915}{1000}$	7·185	7·305	7·500	+0·195	+2·67	4·50
Egypt.....	Egyptian Guinea.	$\frac{875}{1000}$	8·539	8·302	8·333	+0·031	+0·37	5·00
Tunis.....	Piece 25 Piastres.	$\frac{900}{1000}$	5·008	5·008	5·000	—0·008	—0·16	3·00
Japan.....	Cobang (new)....	$\frac{572}{1000}$	8·939	5·713	5·833	+0·120	+2·10	3·50

The third scheme possesses in many respects the advantages of the one just considered, and is also recommended as being in the strictest sense metrical, since it presents the simplest possible relation to the metric system of weights. According to this, the weight of a mass of coin in grammes has numerically the same expression as its value in soldos. The following schedule shows its relations to various national coins in actual use.

Country.	Coin.	Present weight in grammes, 9-10 fine.	Change per cent. of weight proposed.	Resulting weight in grammes.	Value in Soldos.	Value in Dol- lars, (Internat- ional.)
United States....	3 Double Eagles.....	100.309	— 0.31	100.00	100	60.00
"	3 Eagles.....	50.154	— 0.31	50.00	50	30.00
"	3 Half Eagles....	25.077	— 0.31	25.00	25	15.00
"	3 Dollars.....	5.015	— 0.31	5.00	5	3.00
Great Britain....	Sovereign.....	8.136	— 1.67	8.00	8	4.80
"	Half Sovereign....	4.068	— 1.67	4.00	4	2.40
France.....	Napoleon.....	6.452	+ 0.74	6.50	6 $\frac{1}{2}$	3.90
"	Piece of 10 Francs....	3.226	+ 0.74	3.25	3 $\frac{1}{4}$	1.95
Spain.....	3 Doublons.....	25.161	— 0.64	25.00	25	15.00
Portugal.....	Coroa.....	18.099	— 0.55	18.00	18	10.80
Muntzverein....	3 Triple Crowns....	100.000	0.00	100.00	100	60.00
"	9 Crowns.....	100.000	0.00	100.00	100	60.00
Holland.....	Guillaume.....	6.729	+ 0.31	6.75	6 $\frac{3}{4}$	4.05
"	Ducat.....	3.817	— 1.78	3.75	3 $\frac{3}{4}$	2.25
"	Ryder.....			10.00	10	6.00
"	Half Ryder.....			5.00	5	3.00
Russia.....	3 Polous Imperial....	19.161	— 0.85	19.00	19	11.40
Mexico.....	Doublon (new).....	25.963	+ 0.14	26.00	26	15.60
"	Piece 20 Pesos.....	32.840	+ 0.49	33.00	33	19.80
Bolivia.....	Doublon.....	26.068	— 0.26	26.00	26	15.60
Ecuador.....	Piece 4 Escudos.....	12.630	— 1.03	12.50	12 $\frac{1}{2}$	7.50
Brazil.....	Piece 10 Milreis.....	9.122	+ 0.48	9.16 +	9 $\frac{1}{6}$	5.50
Peru.....	Piece 20 Soles.....	32.120	— 0.37	32.00	32	19.20
Turkey.....	Piece 100 Piastres....	7.305	+ 2.67	7.50	7 $\frac{1}{2}$	4.50
Tunis.....	Piece 25 Piastres....	5.008	— 0.16	5.00	5	3.00
Egypt.....	3 Egyptian Guineas....	24.306	+ 0.37	25.00	25	15.00
Japan.....	Cobang (new).....	5.713	+ 0.65	5.75	5 $\frac{1}{4}$	3.45

The proposition of the American Department of State, which makes the decigramme of pure gold the unit of account, affords the following relations, which are here introduced for the purpose of comparison :

Country.	Denomination of Money.	Present weight in decigrammes and decimal fractions of pure gold.	Proposed weight.	Per centage of change.
United States.....	Half Eagle	75·232	75	— $\frac{3}{10}$
Great Britain.....	Sovereign.	73·224	73	— $\frac{1}{3}$
France.....	Napoleon	58·065	58	— $\frac{1}{2}$
Prussia	Frederick d'or, prior to 1858	60·302	60	— $\frac{1}{2}$
Austria	Double Ducat	68·838	69	+ $\frac{1}{4}$
Muntzverein.....	Crown	100·000	100	
Russia.	Half Imperial.	59·987	60	+ $\frac{1}{30}$
Spain.....	Doublon of 10 Escudos since 1864.....	75·483	75	— $\frac{2}{3}$

The objections which may be made to the unit proposed in this Code, are objections which may be urged against the introduction of any international unit of money. They are found in the inconvenience which will be temporarily experienced in those countries in which the change in the standard of value may disturb, to some extent, the adjustment of prices to commodities, and may require special legislation to secure the equitable fulfillment of contracts; and also in the trouble and expense attendant on the calling in of a coinage which the new system may have rendered unserviceable. But these disadvantages are inseparable from the nature of the reform itself, whatever may be the special shape in which it comes; and if the reform is to be accomplished, they must be encountered. No other plan of unification hitherto proposed has justified the promise that its introduction could be effected with fewer temporary disadvantages than must attend this.

What gold coins shall be legal tender.

500. All gold coins, of the value of the dollar, or of multiples of the dollar by the whole numbers, two, five, ten, twenty, or fifty, which may be struck by any nation, and which, in respect to weight and fineness, shall be originally within the limits specified in article 503, and shall not have become diminished by abrasion, fraud or otherwise, below the lowest of these limits, shall be a legal tender at their nominal value for payments of any amount in any place within the jurisdiction¹ of any of the nations.

¹ See Title VIII.

Silver coinage.

501. Silver coins of the value of one dollar, or any fraction of a dollar, may be issued to facilitate the minor transactions of business; and such coins shall be composed of an alloy, consisting of nine parts of pure silver to one part of base metal, and shall have a weight equal to fifteen times the weight, which, under the provisions of this Code, is prescribed for gold coins of the same nominal value, respectively.

The present ratio of gold to silver, in respect to value at the mints of the United States, is 14.88 to 1, as between the gold coinage and the fractional silver; and 16 to 1 as between the gold coinage and the silver dollar. The silver dollar, being worth more than its nominal value, has nearly disappeared from circulation. The relative value of these metals has largely varied during the last five or six centuries in Europe. Under Henry III. in England, it stood less than 10 to 1; and at the commencement of the coinage of gold under Edward III., in the fourteenth century, it was about $12\frac{1}{2}$ to 1. (*Mr. E. B. Elliott, in Blake's Report on the Precious Metals. Reports of the Am. Com'rs to Paris Exposition.*) To this point it returned, after numerous oscillations, at the commencement of the seventeenth century; after which time it continued on the whole to increase until 1848, when it was 15.83 to 1. This was the culminating point. Since the opening of the Californian and Australian gold fields, there has been a slight reaction; but the effect in this respect of the very large increase in the production of gold, has been much less than might reasonably have been anticipated. Mr. Elliott puts the ratio at present at 15.38 to 1. (*Blake's Report, above cited.*) It is possibly somewhat less. The French mint ratio, in the case of the silver five-franc piece, is 15.5 to 1. This piece, therefore, has nearly disappeared. The French mint ratio, in respect to the two-franc, one-franc, and fractional silver coins, is 14.38 to 1. The British mint ratio is 14.28 to 1. The ratio, 15 to 1, adopted in this Code, is convenient, and very near the truth; the error being in favor of the preservation of the coin from the melting pot.

What silver coins shall be legal tender, and to what extent.

502. The silver coins issued under the last article, when the same shall, in respect to weight and fineness, be within the limits prescribed in article 503, shall be a legal tender at their nominal value, in any place within the jurisdiction of any of the nations; in the case of the silver dollar, for payments not exceeding ten dollars; and in the case of

fractional silver coins, for payments not exceeding five dollars.

Limits of variation from standard weight or fineness within which coins shall be current.

503. In the preparation of the coins authorized by this Code, there shall be allowed a deviation from the standard weight and fineness, prescribed in articles 498, 499 and 501, of the amounts following, to wit :

1. In respect to weight :

For gold coins, one one-hundredth part of the square root of the weight expressed in ter-grammes.

For silver coins, one one-hundredth part of the square root of the weight expressed in pentagrammes.¹

And the foregoing rules shall be applicable to coins weighed in bulk as well as to single pieces.

2. In respect to fineness :

For gold coins ; one part in one thousand.

For silver coins ; two parts in one thousand.

The rules in regard to tolerance of variations have heretofore been arbitrary. The British law makes the tolerance for gold coins two one-thousandths of the total weight ; and for silver coins, four one-thousandths of the total weight. (33 *Vict.*, c. 10, § 20.) The amount of deviation from the standard allowed is, therefore, directly proportioned to the weight of the coin. There would be reason in this, if the tolerance were near the turning weight of the balance ; but as it is immensely greater, (say from one hundred to ten thousand times greater,) the tolerance allowed in large coins should be in much less proportion to the weight than that permitted in small coins.

The law of the United States, (*Act of Congress, of Jan. 18, 1837.*) for a considerable period of time, allowed the same absolute amount of variation of weight (one-quarter of a grain) for all gold coins ; which was equivalent to something less than one two-thousandth part for the double eagle,* and one one-hundredth part for the dollar. At the present time the allowance is one-half a grain for the double eagle, eagle and half eagle, and one-quarter of a grain for the quarter eagle and dollar. (*Act of Congress, of Mar. 3, 1849.*)

The proportion, therefore, varies from about one one-thousandth (in the double eagle) to one one-hundredth (in the dollar.)

For silver coins, the allowance is one and a half grains on the dollar† and half dollar, one grain on the quarter dollar, and half a grain on the

* The double eagle, 516 gr. The eagle, 258 gr. The half eagle, 129 gr. The quarter eagle, 64.5 gr. The dollar, 25.8.

† The dollar, 412.5 gr. The half dollar, 192 gr. The quarter dollar, 96 gr. The dime, 38.4 gr. The half dime, 19.2.

lesser coins, varying from one two hundred and seventy-fifth to about one-fortieth. For gold, in masses of one thousand pieces, the allowance varies from one-seven thousandth (for double eagles) to one-twenty-seven-hundredth (for the quarter eagles;) and for silver, from one-forty-three-hundredth (for the dollar,) to one-sixteen-hundredth (for dimes.) *Act of Congress of Jan. 18, 1837.*

According to the law of probabilities in respect to the numerical results of experiment or observation, the probable error should vary as the square root of the total number. If, therefore, a just allowance can be empirically determined for a given coin, the allowance for any number may be readily deduced from the law of the square roots. The same law will also fairly represent the allowance for single coins of different weights, after the proper allowance for one representing the unit of weight shall have been ascertained.

The numerical *constants* introduced into this Article are derived from the determinations of Mr. *E. B. Elliott*, Statistician of the United States Treasury.

¹ The term *pentagramme*, formed upon the principles of the metric nomenclature, signifies *five grammes*.

It seems proper to present the ratio of the tolerated variations of weight to the total weight of the several coins, as they result from the rule laid down in this Article; the corresponding ratios tolerated by the statutes of Great Britain and the United States having been above given. A formula may be constructed for computing these ratios, equally for gold and for silver at the same time, by taking advantage of the convenient circumstance, that, inasmuch as one pentagramme is equivalent to fifteen tergrammes, therefore, a gold coin weighing any given number of tergrammes will have, according to the relation defined in Article 501, the same value as a silver coin weighing the same number of pentagrammes.

Then putting *W* for the weight of a coin, and *T* for the variation of weight tolerated; *W_t*, *W_p* and *T_t*, *T_p*, for the weight and tolerance in tergrammes and pentagrammes respectively; we shall have, in accordance with the rule of this Article,—

$\sqrt[10]{\bar{W}_t} = T_t$, the variation tolerated in gold coins, referred to the tergramme as a unit; and,

$\sqrt[10]{\bar{W}_p} = T_p$, the corresponding variation for silver coins, referred to the pentagramme as a unit.

$$\text{Also, } \frac{T_t}{W_t} = \frac{T_p}{W_p} = \sqrt[10]{\bar{W}} = \frac{1}{100 \sqrt{W}}$$

That is to say, the ratio of tolerance to weight, for coins of either gold or silver, is found by dividing unity by one hundred times the square root of the weight; the quotient being tergrammes in the first instance, and pentagrammes in the second. If we, therefore, put *W* = 1, the tolerance is one one-hundredth part of the weight. One tergramme of gold, or one

pentagramme of silver, has the value of one-fifth of a dollar = one franc (international) = 1·25th of a sovereign (international) = twenty cents. The variation of value tolerated by the rule, in a coin of this weight, would therefore amount to one one-hundredth of twenty cents, or one-fifth of one cent. The variations of weight and value tolerated in coins in which W is greater or less than unity, are given for the cases most likely to occur in actual coinage, in the following table; in which the weights are to be read as pentagrammes for silver coins, and as tergrammes for gold coins.

Weight, tolerated variation of weight, and tolerated variation of value in gold and silver coins, as determined by the rule of Article 503 of this Code; compared with the same as fixed by the statutes of Great Britain and the United States.

Coins.	Weight. Tergrammes for gold. Pen- tagrammes for silver.	Tolerated va- riation of weight.	Ratio of toler- ance to total weight.	Tolerated va- riation of value.	Total variation of value by	
					British statute.	U. S. statute.
Half Dime = $\$ \frac{1}{20}$ (silver)....	0·25	0·005	$\frac{1}{50}$	\$0·001	\$0·0002	\$0·0013
Dime = $\$ \frac{1}{10}$ "	0·50	0·007	$\frac{1}{10 \cdot 7}$	0·0014	0·0004	0·0013
Franc = $\$ \frac{1}{5}$ "	1·00	0·01	$\frac{1}{10 \cdot 9}$	0·002	0·0008	0·0013
Quarter Dollar "	1·25	0·0112	$\frac{1}{11 \cdot 8}$	0·00224	0·001	0·0026
Half Dollar "	2·50	0·0158	$\frac{1}{58 \cdot 1}$	0·0032	0·002	0·00391
Dollar (gold or silver)	5·00	0·0224	$\frac{1}{23 \cdot 6}$	0·00447	{ 0·004* 0·002†	{ *0·00364 †0·0097
Quarter Eagle = $\$ 2 \frac{1}{2}$ (gold) ..	12·50	0·0354	$\frac{1}{35 \cdot 6}$	0·00707	0·005	0·0097
Half Eagle = \$5 " ..	25·00	0·05	$\frac{1}{50 \cdot 0}$	0·01	0·01	0·0194
Eagle = \$10 " ..	50·00	0·0707	$\frac{1}{70 \cdot 1}$	0·01414	0·02	0·0194
Double Eagle = \$20 " ..	100·00	0·1	$\frac{1}{100 \cdot 0}$	0·02	0·04	0·0194
1000 Eagles = \$10,000 " ..	50,000·00	2·2361	$\frac{1}{236 \cdot 1}$	0·447	20·00	1·8605
1000 Double Eagles } = \$20,000 " ..	100,000·00	3·1623	$\frac{1}{316 \cdot 2}$	0·632	40·00	2·7907
5000 Eagles = \$50,000 " ..	250,000·00	5·00	$\frac{1}{500 \cdot 0}$	1·00	100·00	9·3025
10,000 Double Eagles } = \$200,000 " ..	1,000,000·00	10·00	$\frac{1}{1000 \cdot 0}$	2·00	400·00	27·9070

* Silver.

† Gold.

The tolerance of variation in value, as given in the last column but one in the above table, is computed according to the British rule, although the coins named are not issued by the British mint. The mint of the United States coins all that are named, except the franc or double dime. The British tolerance for small silver coins is too low, and for large gold coins too large. The British statute provides no different rule for tolerance of single coins, and for coin in masses. Hence the variations in the last four examples in the table are excessive. It will be seen, however, that, by the rule given in this Code, the results are entirely consistent; and the computed tolerances are quite reasonable, whether coins are considered singly or in bulk.

The *exact* provisions of the United States statute for tolerance of variation in the weight of masses of coin, are :

For Gold.

In 1000 Double Eagles (= 516,000 grains).	3 dwt.—Ratio,	$\frac{516000}{316000} = \frac{1}{166.6}$
In 1000 Eagles (= 258,000 “)	2 “ “	$\frac{258000}{158000} = \frac{1}{333.3}$
In 1000 Half Eagles (= 129,000 “)	1½ “ “	$\frac{129000}{99000} = \frac{1}{355.6}$
In 1000 Quarter Eagles (= 64,500 “)	1 “ “	$\frac{64500}{44500} = \frac{1}{268.4}$
In 1000 Dollars (= 25,800 “)	½ “ “	$\frac{25800}{25800} = \frac{1}{150}$

For Silver.

In 1000 Dollars (= 412,500 grains),	4 dwt.—Ratio,	$\frac{412500}{412500} = \frac{1}{96.9}$
In 1000 Half Dollars (= 192,000 “)	3 “ “	$\frac{192000}{192000} = \frac{1}{66.6}$
In 1000 Quarter Dollars (= 96,000 “)	2 “ “	$\frac{96000}{96000} = \frac{1}{33.3}$
In 1000 Dimes (= 38,400 “)	1 “ “	$\frac{38400}{38400} = \frac{1}{16.0}$
In 1000 Half Dimes (= 19,200 “)	½ “ “	$\frac{19200}{19200} = \frac{1}{8.0}$

It appears, from dispatches received by the government of the United States during the summer of 1870, that the coinage of the Empire of Japan has recently been remodelled; so as, in respect to the gold coins at least, to be entirely in accordance with the scheme of international coinage proposed in the title “Money” of this Code. Gold is made the standard, and gold coins are the only legal tender, except for small sums; and except also, but only in the open ports, as it respects a coin of silver equivalent to the silver dollar; which in the present state of oriental commerce it seems to be necessary to retain. The standard of fineness for the gold coins, and also for the silver *one-yen* (dollar) is nine-tenths. But the standard of fineness for the subsidiary silver is only eight-tenths. The *yen* is the unit of account, and its representative gold coin contains one gramme and a half of pure gold, or one gramme and two-thirds (five tergrammes) of standard gold; thus corresponding exactly to the international dollar of this Code.

The following tables exhibit the entire system of the Japanese coinage as at present established.*

Table of the weight of the gold coins. Standard fineness, 9-10.

Yens.	Pure Gold.		Standard Weight.	
	Weight in Grammes.	Weight in Grains.	Weight in Grammes.	Weight in Grains.
20	20	462.97	33 $\frac{1}{3}$	514.41
10	15	231.48	16 $\frac{2}{3}$	257.20
5	7 $\frac{1}{2}$	115.74	8 $\frac{1}{3}$	128.60
2	3	46.29	3 $\frac{1}{3}$	51.44
1	1 $\frac{1}{2}$	23.15	1 $\frac{2}{3}$	25.72

* For the interesting information relating to this important measure of

Table of the subsidiary silver coins. Standard fineness, 8-10.

Sens.	Pure Silver.		Standard Weight.	
	Weight in Grammes.	Weight in Grains.	Weight in Grammes	Weight in Grains.
50	10·00	154·4	12·5	193·0
20	4·00	61·76	5·00	77·2
10	2·00	30·88	2·00	38·6
5	1·00	15·44	1·25	19·3

Table of the subsidiary copper coins.

Coins.	Weight in Grammes.	Weight in Grains.
One Sen	7·13	110
Half Sen.....	3·56	55
One Rin.....	0·90	14

Table of the silver one-yen. Standard fineness, 9-10.

	Pure Silver.		Standard Weight.	
	Weight in Grammes.	Weight in Grains.	Weight in Grammes.	Weight in Grains.
One Yen.....	24·260726	374·4	26·956363	416

“ Each kind of the gold coins, namely: Twenty (20) yen, ten (10) yen, five (5) yen, two (2) yen and one (1) yen, among which the last, namely the one yen, is the legal standard, will be the legal tender in all payments to any amount.

“ Each kind of the silver coins, except the silver one-yen, will be subsidiary coins, and legal tender for the payment of sums not exceeding ten (10) yen in any one payment, whether the payment is made in one of these coins or in several.

“ Each of the subsidiary copper coins, namely, one (1) sen, one-half ($\frac{1}{2}$) sen, and one-tenth ($\frac{1}{10}$) of one sen, will be legal tender in payment of sums not exceeding one (1) yen in any one payment.

“ For the sake of rendering facility to foreigners at those ports open to them, and in accordance with the requirement of the traders, both foreign and Japanese, the government will coin the silver one-yen and make it

monetary reform, instituted with such decision in the newly awakened but eminently progressive empire of Japan, we are indebted to the courtesy of Mr. J. H. SAVILLE, chief clerk of the Treasury Department of the United States at Washington.

useful only for foreign commerce. This silver one-yen will be the legal tender in payment of local taxes and of import and export duties. It will also be the legal tender in any commercial transaction in the open ports. This silver one-yen will, however, not be the legal tender in any other place than the open ports, and will not be used for the payment of internal revenue of any kind, nor will it be lawful currency in the interior : though, by mutual agreement, any persons may use it to any amount throughout Japan. In the payment of the import and export duties, the comparative rate of the gold yen to the silver one-yen, will for the present be this: One hundred (100) silver one yen to be equivalent to one hundred and one (101) gold yen."

Standard weights.

504. Standard weights shall be prepared for testing the coins issued by the several mints, including weights exactly representing each of the several gold and silver coins, made by this Code a legal tender in payment of debts. These weights shall be carefully compared and exactly verified by an international commission, composed of experts appointed by the governments of the nations parties to this Code, each government appointing at least one and not more than two delegates ; such commission to assemble at a convenient time and place to be agreed upon between the several governments. The weights so verified shall be deposited in the several mints, with such provision for their safe-keeping as may secure them effectually from falsification, and also, as far as may be, from deterioration by exposure or use. There shall futhermore be made copies of these standard weights for the ordinary uses of the several mints, which copies shall, at least once a year, be carefully compared with the standard weights and duly verified ; and these standard weights shall be used for no other purpose whatever, but to make such comparisons and verifications.

Scrutiny of the coinage.

505. At every delivery of coins made by the coining officers of any nation to the public treasury of the same, there shall be taken indiscriminately, by the treasurer or other officer duly authorized, a sufficient number of pieces of each variety of coin deliv-

ered, to be reserved for assay and scrutiny :¹ and the coins so taken shall be carefully enclosed and sealed, with a label stating their descriptions, numbers and value, and deposited in a strong box or safe so secured that it cannot be opened except by the concurrence of the superintendent of the mint and the officer representing the treasury. At a suitable time after the close of the mint operations of each year, the coins so reserved shall be subjected to scrutiny by a commission of experts to be appointed by the government,² who shall, after thorough examination, make report as to the conformity of those pieces to the standards of fineness and weight. Should there be found a deviation from the standards greater than that which is allowed by the provisions of this Code, all officers implicated in the error shall be thenceforward disqualified from holding their respective offices, or subjected to such other penalty as may be provided by the municipal law of the State to which the mint appertains; except that, if, in view of the circumstances, it shall appear that the error has not been caused by fraud, neglect, or incapacity, the penalty shall not be inflicted.³

¹ *Act of Congress, U. S., January 18, 1837, §§ 27, 32.*

² *British Coinage Act, 33 Vict., ch. 10, § 12.*

³ *Act of Congress, U. S., January 18, 1837.*

Coins may be called in by proclamation.

506. A nation may call in the coins of any date or denomination issued by it; in which case, after public proclamation shall have been made of such recall, the coins specified in the proclamation shall cease everywhere to be a legal tender. But in every such case, provision shall be made for redeeming the coins at their actual value, and for furnishing current coin instead thereof, at the capitals or principal financial centres of the several countries within which they have been in circulation.

Uncurrent coins may be destroyed.

507. When any gold coin of a denomination made

current by the provisions of this Code shall be below the standard weight by an amount greater than the largest deviation allowed by the same, or when any coin shall have been called in by proclamation,¹ it shall be the duty of every person to whom such coin may be tendered in any payment, to cut, break or deface such coin; and the person tendering it shall bear the loss. If any coin cut, broken or defaced, in pursuance of this article, shall prove not to be below the current weight, or not to have been called in by proclamation, the person cutting, breaking or defacing the same shall receive the same in payment according to its denomination. Any dispute arising under this article may be determined by a summary proceeding, to be prescribed by each nation for itself.¹

¹ *British Coinage Act, 33 Vict., ch. 10, § 7.*

Coins of base metal not to form a part of the international currency.

508. No coin or token of copper, bronze, nickel, or any other base metal or mixture of metals, which may be issued by the government of any nation to subserve the purposes of money, shall be a legal tender for payment of any amount, in any place within the jurisdiction of any nation except that by which it was issued.

TITLE XXI.

WEIGHTS AND MEASURES.

The systems of weights and measures in actual use among different peoples, stand to each other in no simple numerical relations; and the transformation of values from one of these systems to another, is ordinarily an irksome and time-consuming operation. No common system could therefore be substituted for all these, which would not stand to them or to most of them in the same relation of inexact commensurability in which they stand to each other. But there is hardly a transaction of practical life into which considerations of weight, or measure, or both, do not enter; and such is the constitution of the human mind that clear conceptions of quantities of any kind are unattainable, except by reference to unit values, which education or long use has made familiar. It matters not how thoroughly we may have been instructed in the denominations of weight and measure employed by other peoples, or how earnestly we may have endeavored, by the study of their visible types placed immediately before our eyes, to acquire the power of directly conceiving positive values, when expressed in these: experience teaches us that our notions thus acquired continue long to be vague and inexact; and that, in order to render them definite, intelligible and satisfactory, we involuntarily seek to transform them, by reductions founded upon relations which, if not true, are at least approximate, into values which long habit has taught us to associate directly with determinate quantities of the objects valued. The substitution, therefore, anywhere, of a new system of weights and measures for the system actually in use, founded as the new system must be, if it is to become a common and international system, upon a basis which will generally bear no simple numerical relation to the basis of the existing system, will impose upon an entire generation such a burden of inconvenience, daily and hourly felt, as to require for its justification very clear demonstration that the advantages to be secured by the substitution are much more than an offset to this very serious inconvenience. And as there are many minds in which considerations of great public benefit, or even of great individual benefit which is only prospective, will after all weigh little in comparison with a much less amount of present and personal inconvenience, it is inevitable that every proposition for the unification of the systems of weights and measures in use in the world, no matter what may be the basis proposed for the new system, or what may be its theoretic simplicity, will meet with determined opposition in many quarters.

But the inconvenience here referred to, which consists in interference with men's established habits of thought, is not the only one which necessarily results from the abrogation of a system of weights and measures

after it has been long in use, and the substitution in its place of a new system, even though it be a greatly better one. That inconvenience can be but temporary, and can affect, at farthest, but a single generation. To abolish suddenly the metric system of weights and measures in France, at the present day, would be to compel the French people to pass a second time through the same painful struggle with established associations as that which attended its original introduction.

But apart from this, every system of weights and measures long in use becomes inevitably entangled in, or incorporated with, the operations of industry or the material interests of men, to the extent that it constitutes at length an element in the actual value of many descriptions of property. The disadvantage which must arise from this source, in case of the abolition of the system, is one of a more permanent, and apart from its permanence, of a more serious nature than any which can spring from the mere violence done to mental associations.

The artificial divisions of landed property are among the things least liable to change among men; and the boundary lines which mark these divisions are naturally expressed, whenever that is possible, in integral numbers of the unit of measure employed. The introduction of a new unit having no simple relation to the first, will make all these values fractional. And the importance of this consideration increases in proportion as the dimensions of the divisions are less, and the absolute value of the surface measured is greater. These are the conditions which exist in regard to the real estate of cities, where they are true as well of buildings as of the ground on which the buildings are erected.

Again, the dimensions of railways, and of the locomotives and other rolling stock used in operating them, have been determined in conformity with the existing systems of measurement; and all these too become fractional numbers when the system is changed. The same thing must occur in every department of mechanical manufacture, where both the objects produced, and the machinery by which they are produced, will cease, with a change of system, to possess dimensions capable of being integrally expressed. When we consider into how many details of manufacturing art the exactest measurements enter as elements of vital importance, and reflect at the same time what vast sums have been invested in the various forms of mechanical production, and made dependent for their returns of profit upon the stability of existing systems of measurement, we shall perceive that the sudden introduction of others, and their immediate extension to every department of industry as well as commerce, would seriously and injuriously affect some of the most important springs of public and of private wealth.

If, however, in view of all the possible consequences which may and must result from the substitution of a system of weights and measures uniform for all nations, in place of the numerous, diverse, and greatly incongruous systems at present in use, it shall appear that there are permanent and lasting advantages to be secured to mankind by the change, sufficient to outweigh the temporary inconvenience and possible confusion

which it may cause, there can be no doubt that means ought to be taken to insure the introduction of such a system at as early a day as may be practicable with a due consideration for the tenacity with which men cling to established usages, and a due regard to the material interests which are likely to be affected by it.

But, supposing the first question to be thus disposed of, and the desirableness of a common system of weights and measures for use among all nations to be universally admitted, there remains behind a second question of hardly less difficulty, which is to determine, among the various systems which may be suggested, that which combines in itself the largest number of practical advantages, and which is therefore intrinsically the best. And here it may be remarked, that many existing systems are so exceedingly bad, so arbitrary in the assumptions of the units upon which they rest, so variable in the absolute values of these units in different provinces or districts of the same countries, and often in their details so inconsistent with themselves, as to call for reform in the interest simply of the peoples who use them, and without regard to the relations of these peoples with contemporary nations. Since, therefore, no system of weights and measures which may be proposed for international use can have any chance of acceptance, unless it shall be in itself very manifestly a good system, it follows that many of the arguments which may be urged in favor of the adoption of an international system, will be arguments of weight in favor of the system itself, independently of its international character.

The disadvantages which result from the great number and diversity of existing weights and measures, are too obvious to require extended illustration. They are felt by all men engaged in effecting the world's exchanges, in the oppressive burden of arithmetical computations with which they incumber all their operations. They are felt by statesmen and statisticians in the difficulties with which they surround all inquiries relating to the resources and the wealth of nations. They are felt by engineers, mechanical artisans and manufacturers, in the greatly increased labor to which they subject such persons, whenever they seek to inform themselves of the improvements in the sciences of construction, or in the practical arts of life, taking place in other lands, in order that they may profit by them. They are felt by travelers and tourists, in the obstacles which they interpose to their proper understanding of what they see and hear in regard to the countries which they visit, and the liability to which they expose them, of taking up erroneous impressions, which, through the publication of their observations, are often conveyed to others. And as it respects all historical or archæological research, not only the diversity of weights and measures existing at present, but the instability of those standards in the past, and the extreme uncertainty which accompanies any attempt to fix their absolute value at any given period of remote antiquity, throws around many questions of the deepest interest, an obscurity which no patience of investigation will ever be able to remove.

The desirableness of a uniform system of weights and measures, to be

used in common by all mankind, is, however, too obvious to admit of any difference of opinion. If between any two individual men, in order to the interchange of material objects, or even in order to the interchange of intelligent thought, it is necessary that there should exist some standard or standards of value recognized by both, the same is true, in a much higher degree, of large communities of men; and by an extension of the reasoning, the same is just as true of all mankind. It is proper to observe, however, that the same is not just as true of all mankind, except on the supposition that relations of frequent commercial, social or intellectual intercourse are established between all the branches of the great human family; and therefore that it has not had always in the past the same importance which it has in the present; nor has it at this time the same magnitude of importance which it is destined to have in the future.

Writers who have endeavored to trace the origin of the weights and measures which we find prevailing among ourselves at the present time, inform us that, in a primitive state of society, men found in the dimensions of their own bodies or of its members, the prototypes of their original linear measures. Two reasons conspire to make such a derivation natural. In the first place, the first uses which the uncivilized human being will have for measures, will be for the construction of his habitation, of his garments, of the rude implements which he employs to facilitate his labor, or of the weapons with which he pursues his game. These must of course bear some convenient proportion of dimensions to the person who intends them for his own use. But, in the second place, the idea of an artificial and material scale or rule for the measurement of objects, is one which involves processes of reflection and abstraction which primitive man has not yet learned to use; while his own person, with its several members, is ever present, not merely as a measure, but as the very thing which is to be accommodated and fitted by means of the earliest constructions for which measurements are made. As in the course of time more numerous comparisons become necessary, the same standards of measurement are naturally applied in making them.

In the measurement of distances, another idea suggests itself, equally growing out of the condition and habits of primitive man. Before man had learned to subjugate animals to his service, his only means of locomotion were such as he possessed in common with these; and in estimating the moderate distances from his dwelling to which his daily walks might extend, nothing could more naturally suggest itself than to count his steps. From this arose the fundamental unit of itinerary measure, which is still more or less employed for rude determinations; *i. e.*, the pace.

In the state of society here supposed, each man will be his own standard. And though the persons of different individuals differ sensibly in dimensions, yet in the transactions which may occur between the members of a community so rude, these differences will be unimportant; more especially when it is considered that no series of successive measure-

ments, made by the same individual, by means of a standard so imperfect, are likely to be more than mere approximations to equality. As civilization advances, and society becomes more perfectly organized, and exchanges multiply, and men, looking beyond the mere supply of their daily wants, aim at the accumulation of wealth, the necessity will be felt of greater uniformity and more exactness in measurements, and an artificial and constant standard will, by common consent, be adopted to supersede the natural and variable one; but this will still bear the same name (the foot for instance) as the standard superseded, and will be designed to represent its average value.* Such conventions will at first extend only to limited districts, and different districts will have different artificial standards, agreeing in name and according approximately, but only approximately, in value. It is thus that there early originated in different countries of Europe, and in different provinces of those countries, more than one hundred different units of measure, all bearing the name *pous, pes, pied, pié, pé, fuss, fod, fot, foute*, or *foot*, and all equally signifying the derivation of the measure from the average length of the human foot; a value, however, which in many instances it exceeds, (as in England and the United States,) and in some, (as in Portugal and many of the Italian States,) largely. The greater number of these discordant measures have disappeared, chiefly in consequence of the extension of the metric system, which now prevails in France, Belgium, Holland, Italy, Spain, Portugal and Greece. Nevertheless, at the Exposition of Weights and Measures in Paris, made in connection with the Universal Industrial Exposition of 1867, there were exhibited thirteen† units of measure as being then in actual use under the name of foot, (or its equivalent in other languages,) among which were found eight different absolute lengths.

The history of the origin of existing weights and measures is interesting, inasmuch as it is a part of the history of the human race. But in its bearing upon the question, what ought to be the standards adopted by men in a high state of civilization, it is of no importance whatever. Yet the foot-measure has been strongly advocated in our own time, on the score that it is a natural measure, suggested by a sort of instinct, which

* Instead of being taken at an average value, this unit of linear measure may have been derived from the person of some conspicuous individual. Thus the Olympic foot-measure of the Greeks is said to have been taken from the foot of Hercules; and the French *pied du roi* should seem from its name to have had a similar origin. We find it also stated that the English yard was derived from the length of the arm of Henry I. in 1101; the length of this measure, previously to the Norman conquest, having been somewhat greater than that of the modern metre.

† The measures here referred to were from Prussia, Bavaria, Wurtemberg, Baden, Hesse, Switzerland, Austria, Denmark, Sweden, Norway, Russia, Great Britain and the United States. The foot-measures of Great Britain, Russia and the United States are identical; also those of Switzerland and Baden. Those of Prussia, Denmark and Norway are very nearly so. The rest are more or less different from either of these; but the foot-measures of Baden, Hesse and Switzerland have metric values.

its almost universal prevalence shows to have been universal. In the gift of reason, however, man has been furnished with a guide superior to instinct; and there is no more propriety in requiring that human society, in the maturity of its intellectual development, should be controlled by the instincts of its infancy, than that the fantasies of childhood should give law to the adult individual.

There is no system of weights and measures anywhere existing, unless it be the metric system, which is not so faulty as to demand reconstruction in many important particulars, without regard to the question of international uniformity, and solely in the interest of the people themselves by whom it is used. Take, for instance, the system which prevails in Great Britain and the United States. For moderate magnitudes, the foot is no doubt a convenient measure of length. It would probably be quite as convenient, and would still more nearly approach the average length of the member from which it purports to have been taken, if it were reduced by a sixth part. A foot twelve inches in length may have been the average foot of some giant race of aboriginal anthropophagi, but it is not the average foot of the civilized man of modern times.*

This foot is much more truly represented by the fourth part of a metre than by the third part of a British or American yard. But either this true foot, which we do not use, or the artificial and imaginary foot, which we do, is, as just observed, a sufficiently convenient unit for moderate measurements, though it is by no means the most so.

It is unfortunately, but very decidedly, too small to be capable of being made most largely useful; yet, since the artificial foot has an established existence, and has become an integral part of every ordinary conception of material magnitude among the peoples who use it, its inferiority of possible usefulness would not be a sufficient argument for setting it aside, if its use were already universal, or there were any reasonable probability that it could ever be made so. But such is neither the fact nor the probability.

The unit of length, which we find mentioned in the earliest written records extant, viz: the historic books of the Old Testament, and which was in use in antediluvian times, as well as later, among the Hebrews and the Egyptians, was the cubit—a measure greater than the foot, and equal in some instances to about half a modern British yard, and in others to more than half a metre.† The yard, which is three times the

* In the volume of "*Investigations in the Military and Anthropological Statistics of American Soldiers*," by Dr. B. A. Gould," published among the Memoirs of the United States Sanitary Commission, are given some interesting results upon the measurement of the length of the adult human foot. Nearly sixteen thousand individuals, of very various races and nationalities, were subjected to measurement, of whom about eleven thousand were white men. Dr. Gould says, "The mean length was found for no nationality to exceed 10·24 inches, and for none to fall below 9·89 inches—the value for the total being 10·058 inches."

† Among the collected works of Professor John Greaves, of Oxford,

length of the foot, is also in use among ourselves as a standard unit for the measurement of all textile fabrics, and all yarns, threads, twines and other articles formed by spinning. The lengths of both these units, the cubit and the yard, are derived, like that of the foot, from the human body; the cubit being the length of the forearm, taken externally from the elbow to the end of the extended middle finger; and the yard, the length of the entire outstretched arm and open hand, measured, however, not from the shoulder, but from the middle of the face, or (where this mode of measurement is still actually practised, as it sometimes is) from the tip of the nose—a feature which furnishes a very definite point of reference. We find in this last mentioned fact a very obvious explanation of the usage which has practically restricted the use of the yard to the measurement of articles of a light and portable, and usually flexible nature, and which has prevented its application to immovable and solid objects.† The savage could stretch along his arm the thong designed to string his bow, and bring the extremity to his lips, and he could measure off with his feet the space designed for the floor of his wigwam, and apply his forearm to its walls; but he could not so conveniently measure the thong upon his foot or his forearm, nor would he willingly apply his face to the surface of a solid, or to that of the earth. For this reason, the yard measure, which, for the purposes to which it is actually ap-

edited by *Thomas Birch*, M. A., and published in London in 1737, is contained a “Dissertation on Cubits,” by Sir *Isaac Newton*, originally written in Latin, in which are given the results of his investigations as to the length of ancient cubits, as follows:

	British feet. Inches.	
Cubit of Memphis, (from exterior of Great Pyramid)	1·732	20·784
“ “ (from King’s Chamber in “)	1·719	20·628
“ “ (from Gallery “ “)	1·717	20·604
Cubit of Babylon	very nearly 2·000	24·000
Royal Cubit of Persia	1·7663	21·1950
Sacred Cubit of Moses, not greater than	2·0782	24·9389
“ “ not less than	2·0605	24·7262
“ “ probable value	2·0629	24·7552
Cubit of the Romans	1·4505	17·4060
Cubit of the Greeks	probably 1·5109	18 1308
Present Cubit of Egypt, (A.D. 1737)	1·8240	21·8880

The Dissertation, from which these numbers are taken, has been reprinted by Captain *C. Piazza Smyth*, in the second volume of his “Life, and Work at the Great Pyramid.” Edinburgh, 1867.

† Mr. *Adams*, in his report, quoted farther on, says, that the yard is a measure of Saxon origin, derived from the circumference or *girth* of the body. (Saxon, *gyrdan*, to inclose or surround.) So derived, it belongs to a period in the history of civilization later than that in which men used the person itself, or a portion of it, directly, as a measuring instrument. But, however derived, the most convenient mode of finding the length of the yard, in the absence of an artificial measure, and, therefore, for using it in the measurement of light and flexible articles, would soon be found to be by reference to the arm.

plied, we find so much superior in convenience to the foot, and which seems to have been thus restricted only by the accidents of its origin, or the early mode of its use, failed to become the ordinary measuring unit, to the great disadvantage of all subsequent time. The yard is superior to the foot for the purposes of practical mensuration, in the respect that while it is small enough to be conceived in its whole magnitude by the humblest capacity, and short enough to be conveniently carried in the form of a rule in the hand, it permits considerable dimensions to be expressed in numbers which the mind still easily grasps, while the same dimensions, expressed in feet, transcend the numerical limits within which clear conceptions are possible. As evidence of the truth of this assertion, we have only to appeal to experience. Let any one endeavor to conceive to himself any considerable number of *feet* of silk stuffs, or of carpeting—as, for instance, *eighty-seven*—and he will scarcely be able to form a definite idea of this quantity until after reducing it to the simpler form of twenty-nine yards. An equal advantage would be found in the application of the same unit to the dimensions of buildings, of city lots, and all other objects requiring many repetitions of the unit, were it not that long habit has in such cases reduced considerably the mental effort which the use of the smaller unit exacts.

As it respects dimensions less than the yard, they are now in fact easily provided for by means of binary subdivisions of this unit; and they might be provided for quite as satisfactorily by means of a decimal subdivision. But as the yard is in practice restricted to a narrow range of application, small measurements are commonly made at present in duodecimal divisions of the *foot*, and binary subdivisions of the inch. It is commonly asserted, and that in a manner so dogmatic as to imply that the proposition admits of no argument, that the duodecimal and binary subdivisions of measure and weight are necessarily and in their own nature preferable to any other. However this might be in case we had a duodecimal or binary system of arithmetical numeration, under the circumstances actually existing it cannot be admitted without many reservations. For it is a fact that, for many purposes, the division of the foot into inches, and of the inch into halves, quarters, eighths and sixteenths, is so positive a disadvantage that it is actually in such cases habitually discarded in favor of a decimal division, which the system does not provide. The carpenter and joiner continue, it is true, to use the duodecimal and binary system in all its details. But the draftsman, the machinist, and the mechanical engineer, while they employ the foot and the inch, discard the binary subdivision of the inch, and substitute the decimal. The civil engineer again, in his geodetic work, discards the inch, and begins his decimal subdivision directly with the fundamental unit, the foot itself. Finally, the land surveyor, though he employs a multiple unit, or chain, having the absurd relation to the standard of sixty-six to one, yet subdivides again his unit decimally, making his smallest division, a link, sixty-six hundredths of a foot, or seven inches and ninety-two hundredths of an inch.

Next above the yard, in ordinary linear measurement, we have the rod, made up of five and a half yards, or sixteen and a half feet. Or, to avoid fractional expressions, we may say that two rods are equal to eleven yards, or to thirty-three feet. A more inconvenient relation, in the use of numbers so moderate, it would baffle the ingenuity of man to devise. Above the rod we have the furlong, a useless denomination, since it is never used. Above the furlong we have the mile, the ordinary unit of itinerary measurement; and above the mile the league, a denomination which in some countries has also passed out of use. We have then a series of denominations of linear measurement, bearing to each other the successive ratios expressed by the following numbers, viz:

12, 3, $5\frac{1}{2}$, 40, 8, 3; so that, 1 league = 3 miles = 24 furlongs = 960 rods = 5,280 yards = 15,840 feet = 190,080 inches.

This system, therefore, which is bad in its basis, is greatly worse in its denominational relations. If it had been contrived with the explicit and perverse design to cut off all connection in conception between the higher denominations and the lower, and to heap up labor for the sake of labor upon the hands of those who use it, it could not have been more successful.

That which is true in this system of measures of linear dimension, is equally true of the measures of surface, of solidity and capacity which it provides; but after what has preceded, it will hardly be necessary to follow these out through all the inconsistencies of their details. For measures of surface we have the square inch, much used in mechanics and physics and dynamical engineering; the square foot applied to lumber, to city lots, to rolled metals, &c; the square of carpentry, containing one hundred square feet, employed for wainscoting, roofing and flooring; the square yard, by which house-painters, plasterers and paviors calculate their work; the square rod; the square chain, containing sixteen square rods; the rood, containing forty square rods; and the acre, containing one hundred and sixty square rods, or four roods, or ten chains—all of which anomalous and arbitrary denominations are intended for the measurement of land. And, finally, we have the square mile, containing six hundred and forty acres, which is used in stating the areas of townships and larger territories. The ratios which connect these several denominations are the following. It is sufficient to present them. They need no comment.

$$144 \quad 9 \quad 30\frac{1}{2} \left\{ \begin{array}{l} 40 \\ 16 \end{array} \right. 2\frac{1}{2} \left. \right\} 4 \quad 640$$

For measures of solidity we have the cubes of the inch, foot, yard and rod, with the following relations:

$$1728 \quad 27 \quad 166\frac{2}{3},$$

with a special provision for the case of fire-wood, of which the unit is a cord, consisting of one hundred and twenty-eight cubic feet.

The ordinary measures of capacity in the United States are not connected with the measures of solidity by any simple relation. There are

two of these measures—one for liquid and the other for dry capacity. Their origin, history, and the reason of their differences have been very learnedly made out by Mr. *John Quincy Adams*, in his well-known report of 1821, on weights and measures, made to the House of Representatives of the United States; but these matters, however interesting, are hardly enough so to compensate for the anomalous condition of things to which they have led. According to Mr. *Adams*, the liquid or wine gallon was designed to contain exactly eight pounds of the wine of Gascony, such as is now known by the names of Claret and Bordeaux—these pounds being pounds of fifteen of the ounces whereof the tower pound of the reign of Henry III. contained twelve—such tower pound being the equivalent in weight of two hundred and forty of the silver pennies of the same king.

The dry measure, or wheat gallon, was designed to contain the same number of similarly determined pounds of wheat. Mr. *Adams* informs us, further, that the specific gravity of the wine named was taken at 0.9935, (temperature not stated,) and its weight per cubic inch at two hundred and fifty grains; and that the ratio of the specific gravities of wheat and wine was as 143 to 175. The pennyweight was held to be equivalent to twenty-two and a half grains. From all which, we calculate that the liquid gallon contained two hundred and sixteen cubic inches, and the wheat or dry gallon 264.34 cubic inches; or the bushel of eight gallons, 2114.68 cubic inches, which is considerably below the value of the Winchester bushel of Henry VII. (2146 cubic inches); or the Winchester bushel as prescribed by the later act of William III., now the bushel of the United States, (2150.42 cubic inches;) or the imperial bushel, established in Great Britain in 1824, (2211.68 cubic inches.) Mr. *Adams* has shown, by a patient and laborious study of the confused and contradictory legislation of successive centuries, how the wine gallon of Henry III. became successively equal to 217.6 cubic inches, 219.43 cubic inches, 224 cubic inches, and finally, as at present, 231 cubic inches; while the bushel, by dry measure, became at length the Winchester bushel of 2150.42 cubic inches—losing thus, altogether, the previously existing proportionality of 175 to 143, which would have required a bushel of not less than 2261.54 cubic inches.

It appears to be a favorite idea of Mr. *Adams*, that there *ought* to be two different units of capacity, bearing to each other the same relation as to volume which the average specific gravity of liquids sold by measure bears to that of corn and other seeds sold also by measure; so that dissimilar volumes of these different articles having the same name, may have also the same weight. This he calls a *uniformity of proportion*, in contradistinction to the relation of equality, which he calls a *uniformity of identity*. But it is evident, without argument, that this uniformity of proportion cannot be by any means a *uniformity of exactness*, except upon the condition that there shall be as many units of capacity as there are varying specific gravities to be dealt with. Mr. *Adams* makes it a reproach to the government of France, that, while professing to create everywhere a uniformity of identity, it still prescribed, by an ordinance

approved on the 6th of December, 1808, by the Minister of the Interior, "that the sale of oil in Paris, by retail, shall be *by weight, in measures* containing five hectogrammes, one double hectogramme, one hectogramme, &c. And." he continues, "these measures, being cylinders of tin, are stamped with initial letters, indicating that one is for sweet oil, and the other for lamp oil. So that here are two measures, of capacity altogether incongruous to the new system, each differing in cubic dimensions from the other, though to measure the single article of oil, and both differing from the litre. They attach themselves in and to the new system by *weight*, but abandon entirely its pretensions to unity of measure, and fall at once into the old principle of adapting the measure to the weight."

If the French government had here been proposing to sell by measure, and not by weight, the reproach would be just. But what shall we say of a system which, though avowedly founded on the principle of "identity of proportion"—of a system, that is to say, which declares that its measures, identical in name but not in volume, are identical also in weight—does yet *not* provide two measures of capacity—one for sweet oil, and the other for lamp oil?

Our measures of capacity could not be more unhappily adjusted than they are. Their single merit is that, bad as they are, they are fixed and definite, and that, by long use, we have made them familiar.

Our system of weights is connected with our measures of capacity and solidity, by the very inconvenient relation that a cubic inch of distilled water, at the temperature of 62° Fahrenheit, the barometer being at 30 inches of mercury, weighs 252.458 grains, which, at 437.5 grains to the ounce, avoirdupois, is equivalent to 997.137 ounces to the cubic foot.*

The pound, avoirdupois, of 7,000 grains, is the unit weight of commerce; but there is another pound, called the troy pound, of 5,760 grains, which is used for the precious metals, and also, but with a different name and mode of subdivision, for drugs and medicines. The commercial pound is subdivided into sixteen ounces, the ounce into sixteen drams. Its multiples are the quarter = 25 or 28 pounds; the hundred-weight = 100 or 112 pounds; and the ton = 2,000 or 2,240 pounds.

The troy pound is divided into twelve ounces; the ounce into twenty pennyweights; and the pennyweight into twenty-four grains.

The apothecaries' pound is divided into twelve ounces; the ounce into eight drachms; the drachm into three scruples; and the scruple into twenty grains.

Of these divisions, the avoirdupois is the best, although there is nothing to be said in defense of what is called the long hundred-weight of 112 pounds, or the long ton of 2,240 pounds; and these denominations are gradually going into disuse. The pound is a convenient unit, nearly

* It is commonly said that a cubic foot of water weighs 1,000 ounces, or 62.5 pounds, avoirdupois; and this is sufficiently near the truth for rough calculations; but when accuracy is necessary, the inconvenience of the actual relation between weight and capacity increases very greatly the labor of calculations.

equivalent to half a kilogramme. Weights below the pound are usually stated in fractions, as one-half pound, one-quarter pound, &c., where that is practicable; and drams are rarely mentioned. The divisions of the Troy and apothecaries' weights are arbitrary in the extreme. In the mint of the United States, the subdivisions of the Troy pound below the ounce are disused entirely; and in the standards prepared at the Bureau of Weights and Measures at Washington, for delivery to the governments of the States of the Union, the ounce is subdivided decimally to the ten-thousandth part; no pennyweight or grain weights being furnished.

Of weights, as of measures, it is claimed that there are important advantages secured by forming denominations lower than the unit on the principle of binary or duodecimal subdivision. But these advantages, if they exist, belong, it is obvious, only to retail dealings. For large or for numerous transactions, subdivisions of the unit in any ratios other than the decimal, occasion only inconvenience, by increasing the labor of computation. The question whether, in small dealings, which are, in general, affairs of purchase and sale, one law of subdivision is better than another, depends quite as much upon the accordance or discordance of this law with that governing the denominations of money, as upon anything else. If a pound of a given article cost twenty-five cents, as many pounds of many articles do, it is much more advantageous to divide this pound into fifths and tenths than into halves and fourths and eighths. It is here that identity of law becomes a "uniformity of proportion," which is truly valuable; and here that the advantages of binary division, of which we hear so much, become positive disadvantages.

But the use of the decimal subdivision of weights for purposes of computation, in respect to which its power as a labor-saving contrivance is incalculable, by no means excludes, as it is commonly assumed to exclude, the use of the binary subdivision, whenever it may be found advantageous to employ it, for the practical purposes of life. That the two go along together very well, is evidenced in the example of our own Federal currency, and in the money of the French nation. Though it is law that ten mills shall make a cent, and ten cents shall make a dime, and ten dimes shall make a dollar, we find ourselves under no moral or legal inability to use a quarter or a half dollar, if we please. There are, among those who argue against the decimal system of weights, some persons who apparently hold that the people who shall adopt such a system will be thereby and thenceforth debarred from the right to divide anything by two, or by four, or by eight, or by any other number but ten, forevermore. Undoubtedly this is all nonsense. When there is any practical advantage to be gained by the use of binary subdivision in small transactions, such subdivision will undoubtedly be employed, even by those who adopt the metric weights; and this without interfering with the decimal division, but by simply for such cases superadding the other to it. It is within the memory of many now living, that we had once not only the half dollar and the quarter dollar, but the eighth and the sixteenth of a dollar also, visibly represented in legal tender coins. Our current silver coinage was

then chiefly provided for us by the Spanish mint. We have chosen to drive out the lesser fractional coins formed by binary subdivision, and to perpetuate the greater by coining them ourselves; but the fact that all of them existed for forty years or more after the creation of the Federal currency, and that some of them still exist without disturbing the system, shows that the binary and decimal divisions can go along together, and be carried very far, side by side, without serious inconvenience, when there is any important object to be gained by maintaining both. It is true that the eighth and the sixteenth of a dollar give us fractions of our smallest coin, the cent. But we might have coined half cents and quarter cents, as for a time we did the former; and the quarter cent would not have been as small as the French centime. The truth is, that these small Spanish coins were driven out, because the dime and the half dime, which are conformed to the decimal division, approach them so nearly in value as to make them useless. Otherwise, like the half dollar and quarter dollar, they might have been retained without, nevertheless, preventing the statement of all values and the performance of all computations from being made in denominations of Federal money.

It is not forgotten that the small Spanish coins, here spoken of, bore definite relations to some of the several "currencies" prevailing in the American States before the Revolution, and perpetuated, for a greater or less length of time, in some of them after that epoch. Thus, the eighth of a dollar was "nine pence" in New England," and a "shilling" in New York. The simplicity of some of these relations, especially of that last mentioned, had a tendency to protract the use of the old colonial money of account; but everywhere, except in New York and North Carolina, and to a great extent in those States also, Federal money had been habitually employed in book-reckoning long before the circulation of the small and worn-out coins of Spain had been finally prohibited.*

* A striking illustration of the extent to which the judgments of even the most intelligent men may be biased by education and habit, is furnished in the following passage, extracted from the able report of Mr. Adams, which has been repeatedly referred to in the text foregoing:

"The divisions of the Spanish dollar, as a coin, are not only into tenths, but into halves, quarters, fifths, eighths, sixteenths and twentieths. We have the halves, quarters and twentieths, and might have the fifths; but the eighth makes the fraction of the cent, and the sixteenth even a fraction of a mill. These eighths and sixteenths form a very considerable proportion of our metallic currency; and although the eighth, dividing the cent only into halves, adapts itself without inconvenience to the system, the fraction of the sixteenth is not so tractable; and in its circulation, as small change, it passes for six cents, though its value is six cents and a quarter, and there is a loss by its circulation of four per cent. between the buyer and seller. *For all the transactions of retail trade, the eighth and the sixteenth of a dollar are among the most useful of our coins; and although we have never coined them ourselves, we should have felt the want of them if they had not been supplied to us from the coinage of Spain.*"

And yet, since this paragraph was written, a whole generation has grown up who know nothing about the eighth and sixteenth of a dollar as coins, and who are so far from "feeling a want of them," that they would feel their reintroduction, if it were attempted, to be a positive nuisance.

It thus appears, from an examination in all its details of the system of weights and measures actually in use in Great Britain and the United States, that this system is one which can only be defended on a single ground—the ground that it actually exists. Were it not that it occupies this position of advantage,—were the question, in other words, now for the first time presented to the statesmen of these two great and enlightened nations,—what system of weights and measures, in the absence of any already established, *ought* to be adopted, it may be safely said that the existing system would have no chance whatever of acceptance, either as it respects its basis, or bases, or as it respects the details of its denominational relations. To supplant an established system is, however, a measure of such gravity, that it should never, and will never, be lightly attempted. It would not be worth while to recommend to the American or to the British people to adopt a new unit of length, for instance, for an object less important than that of bringing into harmony all the discordant systems at present prevailing throughout the civilized world. But it would be worth while to recommend to them, without reference to any such grand and far-reaching design, to effect those important improvements within their own system itself, which, without changing its fundamental units, might be attained, by substituting for the present anomalous multiples and subdivisions of the units, others determined on some principle truly scientific, and preferably to all others, the decimal.

But the prospect of being able to unite all civilized nations in the adoption of one common system of weights and measures and coins, is one of sufficient importance to justify a change much more sweeping than this. And for the achievement of a result so grand and so desirable, nothing more is necessary at the present time than the acceptance, by English-speaking nations, and by the Empire of Russia, of the metric system, introduced into France near the close of the last century, and since adopted by the populations of half of Europe, of a large part of South America, and of Mexico.

The European States* which have adopted the system are France, Holland, Belgium, Spain, Portugal, Italy, Greece, and the North German Confederation. This last important adhesion to the system took place by a law of the Reichstag, promulgated by King William, of Prussia, in the name of the Confederation, on the 17th of August, 1868, which law is to take full effect on the first day of January, 1872. Since the date of this promulgation, the Confederation has given way to the Empire; so that it can hardly be doubted that, when the date specified in the law shall have arrived, Southern Germany as well as Northern will come under its operation. Out of a total population in Europe of, approximately, two hundred and sixty millions, about one hundred and thirty-five millions have accepted the metric system; and, after the first day of January next ensuing, this will be the only system of weights and measures allowed

* *Report of Professor De Jacobi to the International Conference on Weights and Measures of Paris, 1867; Peigné, Conversion des Mesures, Monnaies et Poids, Paris, 1867.*

among them by law. Certain other States have adopted some features of the metric system, especially the law of decimal multiplication and division. This is true of Switzerland,* which has assumed, for the unit of length, thirty centimetres, and for the unit of weight, five hundred grammes (half the French kilogramme.) Besides the decimal multiples and submultiples of weight, Switzerland continues to allow the use of the old divisions still.

Sweden† has adopted the decimal scale, without adopting metrical units of length or of weight. Her unit of length is the foot = M. 0·297, (the English foot being M. 0·3045,) and her unit of weight = K. 0·42, (the English pound being = K. 0·4536.)

Denmark,‡ like Switzerland, has taken the half kilogramme for the unit of weight, and also the decimal scale. But for her unit of length she adheres to the foot, which with her has the value of M. 0·3139.

Austria,§ since 1853, has employed in her custom-houses a pound equal to half a kilogramme, with decimal subdivisions.

Before the decisive action of the North German Parliament, mentioned above, several of the German States had taken some steps toward the introduction of the metric system. This was true in Prussia, in the Grand Duchy of Baden, in Hesse, in Wurtemberg, and in Bavaria; all of which had adopted the decimal scale, and also units of length and weight having simple and definite relations to those of France.

In Great Britain, since 1864, and in the United States, since 1866, the use of the weights and measures of the metric system has been made legal but not compulsory. The law of the Congress of the United States, of 1866, provided, that standards of weight and measure, conformed to the metric system, should be prepared at the Bureau of Weights and Measures in Washington, and furnished to the executive authorities of all the States of the Union; also, that metric weights and balances should be employed in all the post-offices, for weighing letters, and that the letter weight corresponding to a single postage rate should be fifteen grammes, instead of half an ounce, as had been before provided.¶

* *De Jacobi's Report, above cited.* ‡ *Idem.*

† *Idem.* § *Idem.*

¶ The provisions of this act which relate to letter weight were, by an unexampled blunder in legislation, or a singularly perverse ingenuity in the interpretation of law, rendered almost immediately nugatory. Another act was at the same time pending before Congress, of which the design was to regulate international postage; and as the previous legislation of the United States had made half an ounce avoirdupois the limiting weight for a single postage rate, this act provided, or designed to provide, that in the adjustment of rates with foreign nations, "half an ounce avoirdupois should be held and taken, for postal purposes, to be the equivalent of fifteen grammes of metric weight." It was intended that this act should be pressed to its passage before the other; but, by some mismanagement, the order became inverted, and it was not passed until the following day. The post-office department of the United States has therefore felt authorized to apply the provision just cited to the interpretation of the act of the preceding day. Congress is thus made to stultify itself by enacting, first, that the limiting letter weight for a sin-

In South America, the metric system has been adopted by Brazil,* (to take full effect in 1873,) in the Argentine Republic,† in Uruguay,‡ in Chili,§ and in New Granada;|| and in Mexico, in North America.

It thus appears that the metric system of weights and measures is the system established by law for about one hundred and sixty millions of the inhabitants of the civilized world; among all of whom this system is the only one tolerated. It appears further, that this system is made legal, though not compulsory, among about seventy millions more, (the people of the United States and of the British Islands :) or, if the dependencies of Great Britain in all parts of the world be included, among nearly two hundred and fifty millions more. The system, moreover, has been gradually gaining favor everywhere; and of all the great powers which make up the Christian world, there is but one, viz: Russia, which has not, in some form or other, manifested approval of its principles. There is reason, moreover, to believe that this great power will not continue long to maintain so exceptional an attitude. In no country of Europe are the enlightened devotees of science more actively alive to the importance of this great practical reform than in Russia, nor is there any in which such men are more ardently zealous in their advocacy of the measure, or more hopeful in their anticipations of its early success. There are statesmen too, in that great empire, who are fully capable of appreciating all the magnitude of the benefits which must flow from the adoption of a measure so pregnant with good, as well as all the difficulties which must attend its execution, and the embarrassments which must accompany the period of transition; and to their wisdom and their sagacity we may look with confidence for a satisfactory, though it may be a deliberate, solution of the weighty problem which the change, now, as is manifest ultimately inevitable, presents.

To this view of the present state of the question, considered as a political or a practical question, it may be added that the suffrage of the great body of men of science, everywhere, has long since been given in favor of the metric system of weights and measures. Representative bodies of this class of men, of the highest character, and in countries where the system has as yet not come into use, have given public and emphatic expression to their favorable judgment of its merits. The National Academy of Sciences of the United States, the American Association for the Advancement of Science, the British Association for the Advancement of Science, the Royal Society of London, the Imperial Academy of Sciences of St. Petersburg, and many others of those organized bodies which are recognized as constituting the highest scientific authorities of the coun-

gle postage rate shall no longer be half an ounce, but fifteen grammes; and secondly, that fifteen grammes, metric weight, shall be only half an ounce avoirdupois: in other words, that the postal laws shall be changed in an important particular, with the proviso that they shall not be changed at all.

* *Jacobi.*

† *Peigné, above cited.*

‡ *Idem.* Metric system in use in Uruguay, but not exclusively.

§ *Jacobi.*

|| *Idem.*

tries to which they respectively belong, are among those which have thus declared themselves. No account is here taken of the similar associations of France, Belgium, Germany, the Netherlands, and Italy, countries by which the system has been already adopted, since they may be counted in, of course.

By many of these associations (or by all of them) it is recommended or required that, in the scientific papers presented by their members, or printed in their transactions, weights and measures shall be stated in terms of the metric system; and with individual writers for the scientific journals of Great Britain, Austria, Switzerland, Russia, Sweden, Denmark, and the United States, (countries, all of them, in which the metric system does not prevail,) it is becoming every day a more general usage to employ no other. In this respect, the scientific world is so rapidly coming into common accord, that, without any reference to the movements of political authorities, which are often timid, and which, in a matter of this magnitude, may very properly be slow, it will very shortly have created for itself a system of weights and measures which shall be practically universal.

From this view of the actual situation at this time, as it respects the great question of the unification of weights and measures, two inferences present themselves as plainly warranted by the facts. In the first place, to effect this unification, a thing on every account so earnestly to be desired, upon any other basis but the metric system, is palpably a moral impossibility. To expect a people, after having subjected themselves to all the embarrassments attendant on the overthrow of a system interwoven with all their habits of thought, and the substitution in its place of another having not a single point of contact with that which it superseded, intensified, moreover, as these embarrassments were in the case of the French, by the mad precipitation with which the change was thrust upon them, in the wildest period of their eventful history; to expect *any* people, after such an experience, deliberately to relinquish the happy fruits of all this suffering, to reject the new system after it has been familiarized, and though it has been found to be perfect in its scientific method, simple to the last limit of attainable simplicity, and in the highest degree convenient in its practical applications, in order to set up something still newer, but which no logic can ever persuade them is half so good—this is an expectation which no man who has the slightest acquaintance with human nature can ever entertain. Or to expect any other people who may, some three or five or fifteen years ago, have entered voluntarily and through conviction, upon a course of self-education to the details of this system, with a view to its ultimate adoption, under such wise provisions against abrupt and sudden change as might secure them against the confusion which attended its introduction into France—to expect any such people to forego their convictions, and to eschew their legislation deliberately matured, by holding out the temptation of something better than the metric system, after they have satisfied themselves by the study of years that nothing better can be devised—this too is an

expectation just as extravagant and just as sure to be disappointed as the other. If the nations of the earth shall, therefore, ever unite upon a common system of weights and measures, that common system will be the metric system. Conversely, if the metric system shall not meet with universal acceptance, no common system will ever exist.

The second of the inferences referred to above, as deducible from the present aspect of the question under consideration before the world, is that nothing is wanting but persistent effort and active agitation of the measure, to induce those nations whose concurrence in the adoption of the metric system is still necessary in order to make it universal, to follow the example of those by which the system has been adopted already. The progress which has been thus far made toward the end so greatly to be desired, has been made in the absence of any concerted or organized action for the purpose of operating upon public opinion, and has been a simple consequence of the manifest merits of the system itself. Yet this progress has been such as to give us scarcely less cause to wonder than to rejoice; for it is surely a cause for wonder that a change affecting all the material interests of men, and touching all their daily and hourly actions, thoughts and habits, confined at first to a single people fewer than forty millions in number, and forced upon them with so little attempt at preparation, and such utter contempt for the power of habit and the laws of the human mind as to provoke and insure among the less enlightened a resistance and a struggle protracted through nearly half a century, it is indeed wonderful that such a change should subsequently be progressively and spontaneously courted by other peoples upon whom no such political pressure has been brought to bear;* until, a quarter of a century later, it is found to extend to half the inhabitants of the civilized and Christian world, and to have secured a legal standing, although not yet an exclusive adoption, among the larger proportion of the remaining half. In this result, so steadily, so silently, and yet, if we count the time upon the great dial of history, so rapidly accomplished, there is something more than encouraging: there is something prophetic and assuring. In another sense than that intended by *Solomon*, we may say, "the thing which hath been, it is the thing which shall be, and that which hath been done, is that which shall be done," till, in respect to measures and weights, there shall be no diversity of things under the sun.

But the coming of this era of happy accord among nations, foreshadow-

* The fact that the French attempted to force their system upon the peoples subjugated by them during the wars of the first empire, hardly makes it necessary to qualify this remark; for everywhere except in the Netherlands, with the downfall of the empire, the system was thrown off. The natural effect, moreover, of this attempt, at the hands of a hostile and hated power, would be to produce a prejudice against the system; so that we might expect to find these peoples embittered against it upon grounds purely political. This consideration renders the subsequent prevalence of the system among the same peoples the more remarkable, and shows this prevalence to have been a consequence of the triumph of intelligence over passion no less than over habit.

ing, as in a measure it certainly does, the ultimate acceptance of the higher doctrine of the universal solidarity of peoples, may be greatly accelerated by the union of all the influences which can be brought to bear upon the minds of men, through the consentaneous and organized action of all the friends of progress throughout the world. This consideration justifies here a brief enumeration of those characteristics of the metric system itself, which fairly entitle it to the general preference which it has already secured, and to the universal acceptance to which it is manifestly destined; and the same reason demands that the various objections which have been urged against the system, sometimes by men of note and high ability, like Mr. *Adams* and Sir *John Herschel*, should be candidly examined.

The metric system, supposing it to be universally received, will of course be productive of all the benefits which must belong to any common system of weights and measures as a consequence of the fact that it is *common*; and these may, therefore, be at once claimed for it, and will be conceded without argument. It is worth while first to glance at these.

The advantages of a common system, simply as such, are felt in regard to all matters in which nations have a common interest, such as the affairs of commerce, of the adjustment and collection of customs-imposts, and of the interchange of thought under every form, as personal, postal, telegraphic or diplomatic.

In commercial transactions carried on between peoples whose standards of weight and measure differ, and whose monetary systems are usually different at the same time, every exchange effected involves a laborious transformation of the expressions of value from one system to the other. When transactions are large, the burden thus imposed is enormous, and is felt not merely in the labor it imposes, but also in the considerable loss of time which it involves. The unnecessarily increased labor implies, moreover, of course, a correspondant unnecessarily increased expense. It is found, in fact, to be indispensable in every commercial house largely engaged in foreign commerce, to employ computers to conduct this class of calculations, who have been specially trained to the work, and who are charged with no other duty. But every expense incurred in the process of transferring commodities of whatever description from the producer to the consumer, enters at last into the selling-price of the commodity; so that the diversity of weights and measures existing in the world compels the consumers of imported articles in every country to maintain an immense staff of calculators to perform labors for which, in the nature of things, there is no necessity whatever; whose salaries are nevertheless paid out of an assessment *pro rata* upon every article consumed. Moreover, the time which is occupied in performing these calculations retards to a certain extent the completion of every transaction, and is to the same extent a tax upon profits, by keeping capital inactive.

A common system of weights and measures is furthermore promotive

of honest dealing. The public who consume the productions of foreign lands have, in the absence of such a common system, not only in general no actual knowledge of the relative value of commodities at home and abroad, but hardly even a possibility of knowing. And in the fluctuations of value which are continually occurring in foreign markets, none but experts can correctly judge what ought to be the legitimate effects of such changes upon current prices at home. With a common system of weights, measures and moneys, the opportunities of securing extravagant profits by false representations, or of maintaining prices above their just level, when in the natural course of things they should decline, are greatly reduced; and this effect will be so much the more decisive and positive, in proportion as this common system is more simple in its form, and more scientifically methodical in its principles. This, therefore, is one of the points in which the metric system, should it become the system universally prevalent, will be found to be especially valuable. It will not only make it possible, but will even make it easy, for all mankind to understand the ways of the market; and will render those artifices of trade by their ignorance of which they are now such frequent, and are liable to be such continual, sufferers, in a great degree ineffectual.

The advantage of a common system of weights and measures is especially great in all matters relating to the assessment and collection of that part of the revenue of nations which is derived from imposts upon their foreign commerce. Here the existence of such a common system permits the use of the original invoices, without any alteration of the figures in which quantities are expressed, for the purpose of fixing the amount of the duties to be levied. There is no room for error or mistake in the declarations of importers, nor any danger of those misapprehensions, in consequence of which delays so often occur in the deliveries of merchandise, and seizures are occasionally made without cause. But in the absence of such a common system, all those transformations are necessary which have been already mentioned as encumbering commerce; so that, practically, this heavy labor of arithmetical computation has to be performed twice over. The government must have its computers, that it may protect the public interest, and the importer must have his also, that he may know that he suffers no injustice. Many employees are thus kept continually occupied in the performance of labors which add nothing to human wealth or human comfort, but which are made necessary by differences growing out of the early isolation or limited intercourse with each other, of different races or communities of men. With the disappearance of these differences would disappear at the same time the necessity of this profitless labor; and thus there would be liberated for more useful service in other directions, a vast amount of ability and energy now wasted.

As it respects intercommunication or exchange of thought between individuals belonging to different nationalities, the value of a common system of weights and measures is of the highest practical importance. Without such a system there may be no understanding of even the most com-

mon statements in regard to the affairs of life, unless through a resort to tables or to calculations, which render intercourse wearisome, and protract intolerably the simplest explanations. And as in oral communications there is rarely disposition or opportunity carefully to verify results, the liability to misunderstanding is under these circumstances exceedingly great. This may be illustrated by the experience of any one who has had occasion to travel successively through countries differing widely in their monetary systems, but not all in this respect equally differing from his own. An American in France will feel himself, from the first day, as little liable to be deceived in regard to the values of sums expressed in francs and centimes, as he would be if they were stated in dollars and cents. But it is quite otherwise when he passes into Germany, and hears nothing spoken of in the way of money but thalers, silbergroschen and pfennigs.

As it respects diplomatic intercourse also, the absence of a common system of weights and measures is a serious disadvantage. It makes necessary in many cases a duplication of statements in the same documents, so that quantities or dimensions may be expressed in denominations familiar to both the nations represented, and requires, of course, on both sides, the verification of the equivalency of these double forms.

In the matter of intercommunication by postal conveyance or by telegraph, there enter certain other considerations of inconvenience, which arise from the want of common standards of weight, measure and money. The tariff of postages is founded generally upon weights, but sometimes also upon both weights and distances; and the postage rates are payable in the denominations of money current where the letters are posted or where they are delivered. Hence arise difficulties in the adjustment of the tariffs themselves, and occasional embarrassments and possible errors in assessments made under them. The limit of weight allowed for a single postal rate, as expressed in the denominations in use in two different countries, cannot be made to conform to that fractional amount which would be necessary on the one side or on the other, or on both, to secure perfect identity, since the weights on both sides must be units or simple fractions of units familiar to the people. There will, therefore, be sometimes letters which are within the limit at the station at which they are posted, but which will be beyond the limit at that at which they are received. Again, the writer of a letter may be aware he has not exceeded the legal limit as it will be understood at the place where his correspondent is residing; and yet he may find it taxed with a double rate at the office where he is obliged to post it. From the want of harmony in these particulars, correspondence is sometimes subjected to delays, and sometimes actually suppressed as underpaid. Occasionally a functionary will consult the schedule of weights allowed by the postal regulations of the country for which the letter is destined, and if the frank accords with this, will allow it to pass, though overweighted according to his own. If such is his practice, he may have to refer from time to time to several systems of weight and measure besides that of his own country. By the

adoption of an international system he would be required to make reference to only one; which would be so much gained, even though his own, for internal affairs, should not be abandoned.

Telegraphic dispatches are charged in general according to distance. As the lines along which international telegraphs have been erected are few and definite, it is practicable for the companies to prepare and to print tables for the guidance of the operators employed in the several offices established for the receipt and transmission of dispatches. But so long as different standards of distance and money exist in different countries, these must assume as many forms as there are varieties of these standards; and with the extension of the lines, the trouble of revising and correspondingly extending these various guides will continually recur. With the adoption of common standards, all these embarrassments will disappear.

The advantages of a common system of weights and measures, thus far considered, are such as would result from the universal acquiescence of nations in *any* common system. But if this universal acquiescence should be secured for the metric system, there would be secured at the same time benefits of a very high order, which have their source in the nature of the system itself. Of these, the most prominent are those which relate to the educational, practical and scientific uses which the standards by which quantities are measured naturally subserve.

The first and most obvious advantage resulting from the system, considered as an educational instrumentality, arises from the fact that it presents but a single form of expression for numerical values of all the descriptions, and brings abstract and concrete numbers under precisely the same rules of operation.

One of the heaviest burdens laid upon the youthful mind, in the study of elementary arithmetic, consists in the complicated rules required for the treatment of what are called "compound numbers." This burden disappears, as if by magic, the moment that, in place of the anomalous subdivisions of weight and measure which have descended to us from barbarous times, we substitute the denominations of the metric system. Where all was blindness and obscurity before, the change introduces light, and the young learner pursues with pleasure a task which he had previously found to be irksome and repulsive.

The experience of all mankind proves that the decimal system of numeration is the simplest of all conceivable systems for the expression of considerable numbers. It is so even among peoples who are scarcely removed sufficiently from barbarism to count an hundred. Such peoples count almost invariably by tens, told off upon their fingers, and told off sometimes upon both their fingers and their toes. Among civilized peoples, children usually learn the value of the ten Arabic numerals before they are taught the artificial systems of numeration by means of which these ten characters are made to suffice for the expression of all numbers. And this system is so simple in itself that it is acquired almost without a sensible effort. Then follow those elementary processes which are com-

monly called the ground rules of arithmetic, the mastery of which is a primary necessity, whatever be the systems of concrete numbers upon which the learner is to be afterwards required to employ his arithmetical powers. But these being acquired, everything is acquired which the metric system demands, while for one who has to deal with quantities expressed in the weights and measures of any other system, his task is not yet begun.

The extension of the decimal method to fractions of the unit requires but a slightly greater effort than that which is involved in the acquisition of the numeration of integers. The similarity of the principle makes it easy. This extension, moreover, is one which the learner is compelled to make, whether he is taught the metric system or not; and the fact that in the visible divisions of metric weights and measures he has palpable illustrations presented to him of such an extension, makes of this system actually a species of educational machinery for facilitating the attainment of correct conceptions of the abstractions of arithmetic.

While it is an advantage of great importance and value, that, by the aid of the metric system, the elementary books used in schools may be cleared of a vast amount of rubbish, and both teachers and learners relieved of a task as profitless and unnecessary as it is dreary and painful, it is by no means a small one that there will be effected simultaneously a very material saving of time not only in the teaching of arithmetic, but also in all those branches of education which have to deal with material things. The simplicity of the metric expressions for quantity so sensibly facilitates the clear understanding and recollection of the facts of physical and chemical science, of political economy, of statistical geography, and other kindred subjects, and so singularly abbreviates all calculations which it is necessary to institute in regard to these things, that the gain to the learner has been estimated by persons of good judgment at not less than a third part of the time ordinarily devoted to education.* This estimate may be considered excessive, but that the gain is large is too evident to admit of question.

Next to the educational benefits which must follow the adoption of the metric system, may be mentioned the practical. The first of these consists in the extreme facility with which, in the actual affairs of business, all computations may be made by the help of this system for the purposes either of the tradesman or of the mechanic. The advantage hence resulting is three-fold. The mental effort required for the operation is less, the time consumed in making it is less, and the liability to error is materially less than is the case in the use of denominations of weight and measure not standing to each other in decimal relations.

In the mechanic arts, moreover, particularly in all constructions in which the exact adaptation of the several parts to each other is essential, the measures of length in use, where the metric system has not yet been adopted, are too deficient in the delicacy of their subdivisions to answer the purposes of the workman; and they have accordingly, as has been remarked earlier in this paper, been discarded in favor of a decimal di-

* *De Jacobi's Report, above cited.*

vision. This is a tacit recognition of the merits of the principle on which the metrical relations are founded ; and it furnishes an indication of what would be the practical advantages which would follow the adoption of the decimal division throughout all the range of linear dimensions.

As it respects weights, where minute accuracy is required we have seen a tendency in the same direction. The jewellers of England and the United States may still continue to deal in grains and pennyweights, but the mint of the United States has discarded these denominations for decimals of an ounce, and analytic chemists everywhere use grammes and milligrammes only.

But one of the most important of the practical advantages which the metric system offers to those who use it, is found in the relation which connects *weight* with the measure of *cubic capacity*. The unit measure of capacity is a cubic decimetre, and is called a litre. The litre of water furnishes the unit of commercial weight, which is a kilogramme. The litre contains one thousand cubic centimetres. A cubic centimetre of water, therefore, weighs one gramme.

Water again is the standard of reference for specific gravity ; that is to say, its specific gravity is 1. Hence, as the bulk of water in litres is the weight of the same water in kilogrammes ; or as the bulk of water in cubic centimetres is the weight of the same water in grammes ; so the bulk of any other substance in litres (cubic decimetres) multiplied by the specific gravity of that substance, is the weight of the same substance in kilogrammes ; and the bulk of any other substance in cubic centimetres similarly multiplied, is the weight of that substance in grammes. Silver, for instance, has a specific gravity of $10\frac{1}{2}$. Hence $10\frac{1}{2}$ kilogrammes of silver would form a solid having the contents of one cubic decimetre. And one cubic centimetre of silver weighs just ten and a half grammes. On this principle, the weights of all solids are deduced in metric values with great facility, from a knowledge of their bulks and specific gravities ; and the bulks are in like manner and with equal facility deduced from their weights. But these are problems which are only solved by means of many figures, involving several successive multiplications and divisions, usually also with inconvenient numbers, when any other modes of stating weights and dimensions are employed except those furnished by the metric system.

The advantages which accrue to science from the use of this system are equally important. The first of these to be noticed is a natural consequence of the fact that the system is in itself one of the most complete and admirable examples possible of scientific method. Being constructed in exact accordance with the plan of abstract arithmetic, it makes available, for the purposes of its computations, all the tables which have been prepared with reference only to the properties of abstract numbers ; thus not only reducing labor, but increasing the power of the machinery by which labor is performed. The connection between bulk and weight also, which has just been mentioned as being attended with such frequent advantage to the practical man, is an advantage still greater to the man of

science; and it is, in itself, an idea strictly scientific, as admirable for its ingenuity as for its scientific simplicity. The artisan or the mechanic may have occasion to avail himself of this property of the system only at considerable intervals, but the chemist or physicist finds it of daily and hourly use.

The metric system has furthermore become almost a necessity to the scientific world, in order that those who belong to this world may understand one another. Much of the literature of science produced in the early part of the present century, and in centuries before the present, is made practically useless to modern readers, in consequence of the fact that all its statements of quantity of every kind are made in denominations which are only locally intelligible. In science, it is hardly necessary to say, exactness is everything; and hence the literature above spoken of fails in precisely the point in which all its possibility of value lies. A patient student might, it is true, by laborious transformations of the expressions given, bring them into a form suitable for comparison with results elsewhere obtained; but it is not always the case that the values of the denominations employed are accurately known. Mr. *Peigné*, in his compendium of the weights, measures and moneys of the world, published in France in 1867, speaks of the task he had attempted as one which "bristled with difficulties, numerous and at times insolvable, however obstinate and conscientious the persistence which one might bring to it." The making of the supposed transformations is, therefore, not only laborious, but it is not always attended with such certainty as to the correctness of the results as is necessary to the validity of scientific deductions.

In the later years of our century the practice has become so general with scientific writers, of stating measures and weights in terms of the metric system, that a scientific literature is growing up which is truly cosmopolitan. Simultaneously also an extension has been given to the scope of the inquiries in social and statistical science, so wide as to render the use of the system for these purposes a matter not of mere choice, but of necessity. It is now nearly twenty years* since there was assembled at Brussels, on the invitation of the government of Belgium, a convention which assumed the name of "The First International Statistical Congress." This body consisted of two hundred and thirty-six members, who were about equally divided between Belgium and foreign countries, thirty-five being delegates appointed by governments. This first convention, held in 1853, has been followed by six others, of which the second

* This paragraph, and those following, which relate to "The International Statistical Congress," and the probable influence of the proceedings of that body upon the progress of metrological reform, are borrowed from a paper read before the Convocation of "The University of the State of New York," at a session held at Albany on the first day of August, 1871, and published in the "Albany Argus," of the sixteenth of the same month.

was assembled in Paris, in 1855; the third at Vienna, in 1857; the fourth at London, in 1860; the fifth at Berlin, in 1863; the sixth at Florence, in 1867; and the seventh at the Hague, in 1869. The spirit in which these great international assemblages originated is explained in the following brief extract from the report of Mr *S. B. Ruggles*, of New York, the delegate from the United States* to the convention of 1869, at the Hague, recently published by order of the United States Senate.

"The distinguished promoters," says Mr. *Ruggles*, "of the first Congress, at Brussels, had seen enough of modern statesmanship to know that the government of nations, in their present state of material progress, cannot be wisely conducted without a thorough knowledge of 'quantities;' and that the systematic collection and philosophical arrangement of the 'quantities' needed for showing the general condition of nations, was an indispensable preliminary to any recommendation by an international congress of any measures seeking to promote the general welfare."

In accordance with this spirit, "the official report (or '*Compte rendu*') of the congress at Brussels shows its labors to have been largely devoted to the scientific analysis of 'quantities,' in subjects interesting to all nations, to be used as the basis of a uniform system of inquiries, in actually collecting the necessary facts." And in like manner all the succeeding congresses have devoted themselves sedulously to the labor of bringing together every description of facts obtainable in regard to the actual wealth, the productions, natural and artificial, the condition of industry and commerce, the character of the social institutions, and other matters of kindred interest, relating to the various peoples who make up the population of the globe. The results of such inquiries could only be made available for any useful purpose, on the condition that all the "quantities" so ascertained should be reduced to a form in which they could be compared; on the condition, therefore, that they should be expressed in denominations of the same system of weights and measures; and, accordingly, it has been urgently recommended by all these congresses, that all statistical statements everywhere should be made in terms of the metric system. The seventh and most recent of these assemblies, moreover, inaugurated a work which, if efficiently prosecuted, will be in honorable harmony with the magnificence of the idea which originated these congresses of the nations. The nature of this work is thus stated by Mr. *Ruggles*:

"On the last day of the session, Dr. *Engel*, the distinguished director of the statistical bureau of Prussia, presented to the body, in general assembly, a plan of great comprehensiveness and importance, which had been matured after full discussion in the appropriate section, and conversation with most of the governmental delegates. It provides for a full and systematic exploration of the whole field of international statistical inquiry, which is divided for that purpose under twenty-four different heads, each to be the subject of separate investigation by the delegates

* Mr. *Ruggles* also ably represented the United States in the fifth Congress, at Berlin.

or members from some one of the nations to be selected, and which is to embrace the statistics under that head of all the nations. This great work, if fully carried out, will furnish, in convenient encyclopedistic form, a systematic series of carefully prepared reports on most of the subjects of highest interest to the statesmen and legislators of the different nations. Editions of at least two thousand copies of each report are to be published in octavo volumes, under regulations prescribed in the plan, which was unanimously adopted by the congress, with strong expressions of approbation."

Without the metric system, the vast mass of information thus collected would be unavailable; the encyclopedia would be illegible. This system has, therefore, thus become something more than a mere instrumentality in the service of statistical science; it has become even an integral part of the science itself. Henceforth the two are so irrevocably wedded that they can not be separated.

The "International Statistical Congress" may now be regarded as an established institution. Its eighth meeting in order of succession will be held some time during the course of the year 1871, and probably in St. Petersburg. Already the influence of its deliberations, of the published results of its labors, and of the spirit of comprehensive statesmanship which it has inculcated and fostered, is beginning to be sensibly felt, and with each successive decade of years it will be felt with a power continually increasing, in educating the minds of the peoples and in moulding the counsels of governments into harmony with the great principle that nations only then consult their truest interests when they consult the common interests of humanity.

The germ idea of an agency which, with time, has developed itself into a power capable of controlling, and destined so largely to control, the future of human history, is to be found in the report of Mr. *Adams* to the House of Representatives of the United States Congress, made in 1821, which has been already cited in this note. Though this report discouraged the adoption of the metric system by Congress, and though its reasonings had the effect undoubtedly to impress the popular mind with the conviction that the introduction of the system into the American States is hopeless, yet the author himself was as deeply imbued with admiration of this system, considered as a scientific creation, as the warmest of its advocates; and no one felt more profoundly than he how great would be the boon to humanity if one uniform system of weights, measures and moneys could be made to prevail everywhere throughout the world. In the view of his large and statesmanlike intellect, very many of the embarrassments which attend intercourse between nations spring from the narrow and selfish legislation which looks only to the immediate interests or convenience of particular communities, and disregards the results to the great family of men. To him all nations and all races are brothers by blood, inheriting the earth as their common patrimony; and though, in the existing state of human society, it is necessary that the artificial lines which divide States from each other should be preserved, it is em-

inently desirable that, for as many purposes as possible, they should be kept out of sight. He therefore proposed that the President of the United States should be authorized to invite the governments of the several States having diplomatic relations with that of the Union, to appoint delegates to a Congress of nations, charged with the duty of deliberating upon measures likely to be promotive of the general welfare; but foremost, and especially, upon the possibility of establishing a uniform system of weights and measures for all mankind. That this important proposition was productive of no immediate result, is attributed by Mr. *Ruggles*, and with apparent justice, to the political condition of Europe during all the earlier portion of this century; and especially to that compact of political rulers for the suppression of liberal thought, and the stifling of all freedom of political discussion, which the momentous events of recent history have since shattered, known as "the Holy Alliance." Happily, however, at length, to use the vigorous words of Mr. *Ruggles*, "we find the germ of the general convention, planted by the far-seeing sagacity of Mr. *Adams* in 1821, though slumbering for a generation beneath the surface, actually fructifying in 1853, when the first general assemblage of nations by government delegates, and really international in its objects, was convened at Brussels."

From this epoch dates a new era in the history of the world's legislation. For the enlarged views of the reciprocal duties as well as of the true interests of nations in which this great general movement originated, are destined, through its instrumentality, to impress themselves more and more completely upon human institutions; until statutes shall at length cease to be monuments of ignorance, prejudice or ignoble jealousies, and the aim of all laws shall be the greatest good of the greatest number. One most important result has already been secured by the action of these congresses, in that, so far as the science of statistics is concerned, so far, we may even say, as the successful conduct of governmental administration is concerned, it has made the metric system of weights and measures a system of universal necessity; and has made a familiar acquaintance with it absolutely indispensable to every statesman, every publicist, every teacher or student of political economy, and every enlightened lawgiver throughout the world.

It only remains to examine briefly some of the objections which have been brought forward in disparagement of this system, and which have been urged as reasons for discouraging its extension into countries which have not yet received it. These may be distinguished into two classes; as first, strictures upon the merits of the system itself; and secondly, grounds for believing its further extension impossible. The expression "further extension," meaning by this, *further extension in any direction*, is essential to this statement; for the alleged difficulties classed under this head exist equally in every quarter in which the metric weights and measures have not yet been accepted.

It has been objected to the system, upon grounds purely theoretic or scientific, that the basis upon which it rests is not well chosen. The metre is in theory the ten-millionth part of a quadrant of a terrestrial

meridian. Its length is, therefore, as unalterable as the dimensions of the earth itself; and it is impossible that, by any accident or complication of accidents, it should be permanently lost. Nor is it true, as is commonly said, that in case of the loss of all its visible types, a thing hardly conceivable, resort should be necessary to the remeasurement of the great arc of the meridian passing through France, from which it was originally deduced, for its recovery. *For unless all the record of that magnificent survey should be simultaneously stricken out of existence, and all the monuments obliterated which were employed to mark the important points of the great triangulation, the redetermination of any one of the lines connecting those points would suffice for the purpose, since the metrical values of all those lines are now perfectly known.* The objection, however, is, that all the terrestrial meridians are not equal. The metre, therefore, supposing it to be correctly determined, is only the ten-millionth part of a quadrant of *that* meridian on which the great French arc was measured. This objection is pressed very seriously by Sir *John Herschel*,† who quotes the discussion by General *de Schubert*, in the *Memoirs of the Academy of Science of St. Petersburg*, of the principal meridian measurements heretofore made, wherein it is concluded that the equator is an ellipse and not a circle, its major axis having one extremity in longitude about 41° east of London, the other falling in the middle of the Pacific ocean.‡ The ellipticity apparently made out is very slight,

* It would suffice to remeasure the base lines on which the triangulation rested, the termini of these having been fixed by durable monuments.

† A lecture entitled "*The Yard, the Pendulum, and the Metre, considered in reference to the Choice of a Standard of Length.*" Read before the Leeds Astronomical Society, October 27, 1863. By Sir JOHN F. W. HERSCHEL. Published in a volume of "*Familiar Lectures on Scientific Subjects.*" London and New York: 1866.

‡ "*Essai d'une détermination de la véritable figure de la Terre.* Par T. F. DE SCHUBERT." St. Petersburg: 1859. An abstract of the most important particulars of this discussion was prepared by *Madler*, for Prof. *Heiss's* *Wochenschrift für Astronomie, Meteorologie und Geographie*, (Nos. 51 and 52, Dec. 21 and 28, 1859,) which was afterwards translated by C. A. Schott, Esq., of the United States Coast Survey, and republished in the *American Journal of Science*, vol. XXX., second series, from July to Nov. 1860.

Mr. *Airy* also, Astronomer Royal of England, gave, in the *Monthly Notices of the Royal Astronomical Society* for January, 1860, a synopsis of the method of Gen. *de Schubert*, and its results, suggesting at the same time that, by generalizing the method still farther, these results might probably be made more satisfactory. Upon this hint of Prof. *Airy*, Capt. A. R. *Clarke*, of the British Ordnance Survey, was led to make a very elaborate re-examination of the question of the earth's figure and dimensions, reaching conclusions somewhat different from those of Gen. *de Schubert*, and increasing the apparent error of the metre.

The publication of Gen. *de Schubert's* paper, here referred to, marks certainly a new era in the history of geodetic investigation; but the data thus far gathered by direct measurement are far from being sufficient to admit of the satisfactory application of his method, or of the more general one of Capt. *Clarke*, in practice. The truth of this assertion will be manifest from the following statement:

(only a little over one-nine-thousandth,) and the actual difference between the major and the minor axis is less than one mile. The difference is sufficient, however, to invalidate the assumption of the scientific commission of 1799, under whose advice the basis of the metric system was

Hitherto, it has been generally held by geodesists, (1.) that the meridians of the earth are ellipses; (2.) that the axis of rotation is the minor axis of all these elliptical meridians; and (3.) that the meridians of the earth are all equal. On this hypothesis, it would not matter in how widely different longitudes different degrees of latitude should be measured: when compared, they ought always to give the same values for the polar and the equatorial diameters of the spheroid, and for the compression of the poles. The fact is, that the results deduced from such comparisons are largely discordant.

Gen. *de Schubert's* paper commences with a series of comparisons of this nature. For the purposes of the comparison he selects eight different arcs, viz: the great Russian arc, of $25^{\circ} 20'$ in length; the Indian arc, $21^{\circ} 21'$; the French arc, (extended to Formentera,) $12^{\circ} 23'$; the South African arc, (of Maclear and Henderson,) $4^{\circ} 37'$; the Peruvian arc, $3^{\circ} 7'$; the British arc, $2^{\circ} 50'$, (since extended to $10^{\circ} 13'$); the Prussian arc, $1^{\circ} 30'$; and the Pennsylvania arc, $1^{\circ} 29'$. Five of these eight arcs differ much less in longitude than could be desired, being all within a range of less than thirty degrees. The Indian and the Peruvian arcs differ in longitude by nearly half a circle, but the Peruvian is very short. The Pennsylvanian arc is nearly in the same longitude as the Peruvian, and seems to have been included, not as having important weight, but because of this circumstance.

Comparing each of these eight arcs with every other, the author obtains twenty-eight systems of elements, presenting great discordances. The maximum and minimum values obtained for the semiaxes differ by miles, and the values found for the compression are equally various. Gen. *de Schubert* concludes from this that the earth cannot be a solid of revolution; but he still holds that the meridians are elliptical; and he consequently infers that the true mode of finding the figure of the earth is to compare different portions of each arc with other portions of the same arc, or with the whole.

When this conclusion is reached, however, we see at once how meagre are the materials available for the application of this method. The Russian arc a little exceeds one-fourth of a quadrant in length, and the Indian arc falls short of one-fourth of a quadrant by about the same amount. The French arc (extended to Formentera) is about one-seventh of a quadrant. These are long enough to permit of some comparisons, tolerably trustworthy, to be made within themselves; but the rest in the list above given may for this purpose be dismissed at once.

Now dividing these three principal arcs into two portions approximately equal, each, the author obtains from the Indian and the Russian, values of the polar axis differing only about fifteen hundred feet; but the difference between the values of this element as deduced from the Indian and the French arcs, is more than ten times as great, or exceeds fifteen thousand feet.

The author therefore rejects the French arc in making this determination, thus narrowing his base to the Indian and the Russian alone; giving at the same time, rather arbitrarily, double the weight to the Russian which he gives to the Indian.

By the aid of the semiaxis thus found, and the measured length of the degree of Peru, the equatorial radius in the longitude of the Peruvian arc is obtained; and this, with the Indian and the Russian equatorial radii, serves to determine the eccentricity of the equator, considered as

selected; the assumption, viz: that the earth is a regular oblate spheroid, all the sections of which, made by planes passing through the axis of revolution, are equal and similar. On this assumption, the ten-millionth part of any one meridional quadrant is the ten-millionth part of any other; and wherever a man may be upon the surface of the planet, he has beneath his feet the natural standard upon which rests the system of

an ellipse, and the position of its major and minor axes. To find the length of a meridional quadrant in any longitude, the next step is to calculate (which with the data now possessed is easy) the length of the equatorial radius in that longitude. This is the major semiaxis of the meridional ellipse, and the earth's polar semiaxis is the minor.

The idea of this method is excellent, but it rests on assumptions which are only approximately true, and it requires that more numerous and more extended measurements should be made before it can be satisfactorily applied. It assumes that the meridians are all elliptical, but none of them appear to be strictly so. It assumes the equator to be an ellipse, but the equatorial diameters independently deduced from the several meridional arcs, do not well sustain that hypothesis. Capt. *Piazzi Smyth*, Astronomer Royal of Scotland, expresses the opinion ("*Our Inheritance in the Great Pyramid*," p. 38,) that they prove it rather to be "an irregular curvilinear triangle." There is, furthermore, a mechanical difficulty involved in Gen. *de Schubert's* theory of the earth's figure; which is, to explain how a planet of which the surface is three-fourths, and the equatorial circumference nearly five-sixths, fluid, should have the form of an ellipsoid of three unequal axes.)

It was suggested by Prof. *Airy*, as above stated, on examining the results of Gen. *de Schubert*, that a better mode of employing the available material would be to make no attempt to determine in advance the value of the earth's polar axis, or any of its equatorial radii, but to leave the three semiaxes of the ellipsoid, as well as the longitude of the equatorial semiaxes, indefinite; and to determine, by the method of least squares, what values given to these would best represent all the positions of all the stations which had been determined astronomically and geodetically upon the several arcs measured. This was the method employed by Capt. *Clarke*, in his elaborate investigation presented to the Royal Astronomical Society in 1860, and published in that year in the 29th volume of their *Memoirs*. Capt. *Clarke* selects forty stations upon the lines of the Indian, the Russian, the French, the British and the Peruvian arcs, and determines what are the values of the variable elements mentioned above, which make the squares of the errors of latitude of these stations a minimum. He thus finds a larger eccentricity in the equator than Gen. *de Schubert*, and a smaller polar axis; also a larger eccentricity of the Paris meridian, and a larger error of the metre. Capt. *Clarke* has several times modified his results, as reason has been found to correct the latitudes of some of his stations; and he appears to be by no means satisfied that the equator is truly an ellipse and not a circle. On this point his own language is: "Whatever the real figure of the earth may be, if on the investigation we presuppose it to be an ellipsoid, it is quite clear that the arithmetical process must bring it out an ellipsoid of some kind or other; which ellipsoid will agree better with all the observed latitudes, as a whole, than any spheroid of revolution will. Nevertheless, it would scarcely, I conceive, be correct to say we had *proved* the earth not to be a solid of revolution. To prove this would require data which we are not in possession of at present, which must include several arcs of longitude. In the mean time, it is interesting to ascertain what ellipsoid does actually best represent the existing measurements."

weights and measures for the world. But since this assumption has been shown to be possibly or probably incorrect, we are no longer at liberty to regard the ten-millionth part of a quadrant of a meridian as being a quantity everywhere the same. A metre deduced from the great meridional arc of Russia would be slightly greater than one derived from the arc of Peru. The *actual* metre, supposing it to be truly the ten-millionth part of the French quadrant, would fall very nearly half way between these values; since, according to *de Schubert*, the radius of the equatorial ellipse lying in the plane of the French arc is very nearly the mean equatorial radius; while the similar radii corresponding to the Russian and Peruvian meridians, are not far from the positions of the equatorial semi-axes.* This discovery, if it is proper to apply such a term to what is as yet but a plausible hypothesis, renders it necessary to qualify the definition of the metre, and to say that this unit is the ten-millionth part, not of a quadrant of *any* terrestrial meridian, but of a quadrant of a particular terrestrial meridian. Whatever there may be, therefore, pleasant to the imagination in the idea of a standard derived directly from a dimension everywhere the same, and everywhere equally ascertainable, of the globe on which we live, must be relinquished. This consideration would no doubt have been fatal, in the view of the scientific commission of 1799, to the claims of the meridian as a basis of a system of weights and measures, had the irregularity of the earth's figure been known at the time it was selected for that purpose; for the commission rejected the proposition to adopt the pendulum as the basis, for the reason of a similar want of uniformity of the indications of such a standard in different latitudes and different longitudes. It must be obvious, however, that it is only the ideal perfection of the standard, scientifically considered, that is impaired by the discovery of the irregularity of the terrestrial ellipsoid. Practically this circumstance is of no importance whatever. If the standard had been some natural dimension to which reference could upon occasion be easily made, either directly by individuals, or by the combined efforts of several, exacting in practice no great labor or expenditure of time or of money, then the discovery that this dimension, originally assumed to be everywhere the same, is not so, would be one of gravity. But the quadrant of the meridian has no such universal availability as this. It was not contemplated by the authors of the metric system that the stupendous labor of measuring a great meridian arc would be ever again undertaken for the purpose of simply verifying the length of the metre, or of recov-

* The positions of these axes are, however, very imperfectly ascertained, if indeed the whole hypothesis of the ellipticity of the equator is not a mistaken one. Capt. *Clarke's* paper, referred to previously, removes the vertex of the equatorial ellipse from longitude 41° East to longitude 14° East. This would give to the Paris meridian nearly a maximum instead of a mean length. In his revised calculation, published in 1866, in an appendix to a volume from the Ordnance Survey, containing "*Comparisons of Standards of Length of England, France, Belgium, Prussia, Russia, India and Australia*," he removes it again from 14° East to $15^{\circ} 34'$ East.

ering it, in case of its accidental loss. The latter accident was provided for, by directing that the metre should be re-established, in case of the destruction of the prototype deposited at the palace of the Archives, by means of its known relation in length to the length of the pendulum vibrating seconds at Paris. But it is not probable that even this comparatively expeditious method would be practically resorted to, since pendulum experiments of this degree of delicacy are difficult; and are themselves subject to some uncertainty. The probability rather is, that the prototype metre would be replaced, if lost, in the same manner in which the standard British yard was reproduced after its destruction by the burning of the Parliament houses in 1834; and that is, by the comparison of copies of it carefully made previously to its destruction, of which considerable numbers now exist. The British statute on the subject, like the French, required the reproduction to be made by reference to the seconds pendulum; but since the renewal of the standard, this provision of law has ceased to exist in Great Britain.

Looking at the matter practically, therefore, it may be stated that the metre is the length of a certain platinum bar, originally constructed of the exact length, as presumed, of one-ten-millionth part of the terrestrial meridional quadrant passing through Paris; this length having been determined by an elaborate measurement of nearly one-ninth part ($9^{\circ} 40'$) of that quadrant. The paramount reason for the selection of such a standard originally, was that the unit might be as invariable as the globe itself. This property of invariability it has, in being derived from a particular meridian, quite as completely as it could have it if all the meridians were equal. The fact that the metre represents the ten-millionth of one particular quadrant, is only to be regretted, inasmuch as it detracts from the beauty of the pure ideal upon which the system was founded.

But it is objected that the actual metre is not, after all, the exact ten-millionth part even of this particular quadrant. It is said to be too small by a fraction, minute indeed, but by no means inappreciable. This objection, which is apparently not without foundation, seems by some to be regarded as a sufficient reason for rejecting the metre as the basis of a system of weights and measures altogether. Such persons, to be logical, should reject equally every basis which purports to be a determinate part of any given dimension of the earth, whether it be of a meridian, or of the equatorial circumference, or of the polar axis, or of the equatorial or the mean diameter, unless this dimension shall be, or *until* it shall be, demonstrated to have been ascertained with absolute exactness. But that certainly is not the case at present with any of the dimensions just named. If anything is made apparent by an examination of the details of any of the great geodetic operations which have been carried on during the last two hundred years, it is that the earth is too irregular in figure to be regarded any more as an ellipsoid of three axes, as Gen. *de Schubert* and Capt. *Clarke* would make it, than as a simple oblate spheroid; and yet these gentlemen profess to assign the error of the metre, by comparing the quadrant passing through Paris, theoretically computed as a quadrant of

such an ellipsoid, with the same quadrant as determined by the actual measurement of its ninth part. But certainly this arc measured did not form part of a regular ellipse. Had that been true, the successive degrees measured would have exhibited, in proceeding from south to north, a regular and gradual increase in length. An increase was observed, but it was by no means regular. The whole arc being divided into three parts approximately equal, showed, in the southern division, a mean increase of 12.9 toises; in the middle division, an increase of 32.4 toises; and in the northern division, an increase of 5.5 toises only. When subsequently the arc had been extended northward to the latitude of Greenwich, and southward to the island of Formentera, making a total of $12^{\circ} 48' 43''.89$, or very nearly one-seventh of the quadrant, a similar division into *five* parts, (the northern, however, being less than the average of the others,) gave, in the southern division, a *diminution* going north, in direct contradiction to the theory of a flattened spheroid. The succession of values was then, for the southernmost division, a diminution of two toises per degree going north; for the second, an increase of 12.9 toises; for the third, an increase of 32.4 toises; for the fourth, an increase of 8.4 toises; and for the fifth, an increase of 7.23 toises. It is thus manifest that the diminution of curvature was least rapid in the middle of the arc, being more rapid both north and south of that point, which is not a characteristic of an elliptical curve. The scientific commission which fixed the length of the metre, had before it only the measurement from Mont Jouy to Dunkirk, of $9^{\circ} 40' 45''.67$. Two eminent geometers, members of this commission, *Laplace* and *Legendre*, found, from a comparison of the different sections of this arc, an ellipticity of 1-150th and 1-148th; but from a comparison of the whole with the arc of Peru, only an ellipticity of 1-334th. *Delambre*, who, with *Méchain*, had executed the measurement, found, from a similar comparison with the Peruvian arc, an eccentricity of 1-312th, and subsequently of 1-309th. Upon the extended arc, from Formentera to Greenwich, he made the eccentricity finally 1-178th. The commission fixed the metre at 443.296 French lines; but *Delambre* concluded, from his latest results, that the true length should be 443.320 lines; which, if correct, would show the metre of the commission to be too short by 1-460th of an English inch.

Degrees in the same latitudes, measured in different parts of the world, differ, in some instances, very sensibly. The length of the degree found by *Liesganig*, in Hungary, is materially less than that in the corresponding latitude in France. That found by *Mason* and *Dixon*, in Pennsylvania, is also considerably less than that of the French geodesists between Formentera and Mont Jouy, both in latitude 39° . A very extraordinary anomaly is presented by the measurement of *Lacaille*, at the Cape of Good Hope, which gives, in latitude 33° S., a greater length than is found in France in latitude 45° . This determination, compared with the Peruvian arc, would imply, in the southern hemisphere, the extreme flattening of 1-78th.*

* Little weight is attached to the measurement in Pennsylvania, it

Any two measurements anywhere made, when compared, give a different value for the compression of the polar regions; and these differences are moreover found as well in comparing different parts of the same measured arc, as in comparing different arcs. Col. *Everest*, in his report upon the northern section of the great meridian survey of India, has thus made comparisons upon twelve arcs, combined in forty-two different modes; and from every comparison he has deduced a different ellipticity, and different values of the earth's polar and equatorial diameters.* Among the arcs thus compared are the Indian arc, the Russian arc, the French arc, the Swedish arc, and the Peruvian arc. The northern half of the northern section of the Indian arc, compared with the southern half of the same section, gives an eccentricity of 1-192nd; while the southern half of the northern section, compared with the whole southern section, gives one of 1-390th—about half the former.

The following remarks † of Col. *Everest* illustrate the futility of the attempt, in the present state of our knowledge, to ascertain, with anything like minute exactness, the true dimensions of the earth, from geodetic measurements. He says: "In making the selection of arcs, which are most worthy to be employed in these comparisons, it is utterly hopeless to escape the imputation of exercising the judgment arbitrarily, for the plain reason that what pleases one person will rarely satisfy the views of another. If, however, the elements be all authentically extracted, and their functional constants accurately computed, it can be of little moment what selection is made, provided a full exposition be afforded; for these elements and constants will materially facilitate the task of those who give the preference to any other arcs than those chosen." And further: "As each comparison gives an independent value of the major axis of the ellipse and of the compression, there arises a difficulty similar to that just alluded to, of fixing on the least objectionable method of finding the most probable mean result; to which the same observation is applicable, viz: 'that every geodesist is at liberty to use that which seems best to him, provided he gives a full explanation, and leaves the data free for others to employ in any manner they may deem preferable.'"

The conclusion at which we arrive from all this discussion is, that while the metre is probably somewhat in error, the amount of its error is uncertain, and that, if it were altogether correct, we could not know it to

having been made without triangulation, and with the chain alone. Gen. *de Schubert*, computing its length from his hypothetical spheroid, makes it 675 feet, or about one furlong, too short—the total length measured being nearly 102 miles. *Lacaille's* measurement has, moreover, been shown, by the more exact operations of *Maclear* and *Henderson*, to have been affected by a very material error of excess.

* Similarly discordant results, obtained later by Gen. *de Schubert*, by comparisons made upon eight measured arcs, have been mentioned above. It may be thought by some that the citations from Col. *Everest*, which follow, have no longer any value; but it is too early yet to say that the old geodetic methods are entirely superseded.

† *An Account of the Measurement of two Sections of the Meridional Arc of India, &c.* By Lieut. Col. EVEREST. London, 1847. The citations are from p. 425.

be so. *Delambre*, the distinguished geodesist, whose labors contributed so largely to furnish the basis on which the international commission of 1799 established their determination of the metre, and himself a member of that commission, makes the defect of length about equivalent to 1-460th of an inch. Sir *John Herschel*, computing from the data furnished by *Airy*, *Bessel* and *de Schubert*, puts it at 1-208th of an inch. The same authority, computing from the results of Capt. *Clarke*, advances the magnitude of the error from 1-208th to 1-163rd of an inch. And Capt. *Clarke* himself, in his later computation, published in 1866, in a volume issued by the Ordnance Survey, gives it at the somewhat reduced value of 1-173rd. Finally, from the direct consideration of the French geodetic measurement itself, we have some reason, as will presently be made to appear, to suppose that these valuations may be, one and all, too great. But what is beyond any question is, that no two geodesists, though starting from the same facts, ever reach precisely the same result; that every addition to the data must modify every previously formed deduction; and that the time will probably never arrive when the length of any meridional quadrant will be known with absolute exactness.

It will of course be understood, and it has been stated already, that the manner of arriving at *any* value of the imputed error, is by comparing a calculated value of a hypothetical quadrant of a presumed regular ellipsoid of three axes, with the length of an actual quadrant of the earth itself, as determined by the direct measurement of its ninth part. Now, it so happens that the French arc, upon the measurement of which the metre is founded, is so situated as to give very nearly the length of the mean degree; that is, of a degree scarcely at all affected by the ellipticity of the meridian, whether that be greater or less. The limiting latitudes are Mont Jouy, $41^{\circ} 22' 42''.4$, and Dunkirk, $51^{\circ} 2' 9''.7$, of which the sum exceeds a quadrant by but about two and one-third degrees. If this sum had been just 90° , the influence of the ellipticity upon the length of the metre would have been practically inappreciable. In the actual case, the substitution of the ellipticity found by Gen. *de Schubert*, for that employed by the scientific commission, would not have affected this length by so much as the fifty-thousandth part. The possibilities of error, which always exist, to the extent of a second or two, and inevitably to fractions of seconds, in the latitudes of the terminal stations, may introduce a larger degree of uncertainty than this—an uncertainty which diminishes, however, as the amplitude of the arc is greater.

The error, then, if it exists, is thus thrown upon the process of measurement. According to the computation of Sir *John Herschel*, from the data of Gen. *de Schubert*, the international commission of 1799 made their quadrant too short by 4,008 British feet. From Capt. *Clarke's* results he deduces the larger error of 5,124 feet; but Capt. *Clarke* himself gives the length of the quadrant passing through Paris as being 1,472.5 metres in excess of ten million, which is equivalent to an error of 4,831 British feet. Hence, the original measurement must have been wrong to the extent of 445 feet, (the ninth part of 4,008,) if we adopt the first conclusion,

or of 537 feet, (the ninth part of 4,831,) if we prefer the second. Now, a test of the accuracy of the geodetic work, as it was actually conducted, may be found in the fact that the base of verification at Perpignan, 6,006·249 toises in length, having been determined by computation through a chain of fifty-three triangles, from the base at Melun, distant 33,000 toises, was found to be apparently of the length of 6,006·089 toises; so that between the length as measured and the length as computed, there was a discrepancy of only sixteen-one-hundredths of a toise. As in 33,000 there are five and a half times 6,000, this error indicates a possible error five and a half times greater on the whole distance between the bases; that is to say, nearly T. 0·88. Then as the whole arc measured was 551,485 toises, or seventeen times 33,000, the total error on the whole distance might have been possibly T. 15; which is equivalent to ninety-six feet nearly. The probabilities are, therefore, that the length of the quadrant, as determined by *Méchain* and *Delambre*, is not in error more than about 860 feet, if as much; and that the possible error of the platinum metre of the Archives, instead of amounting to 1-200th of an inch, does not exceed 1-960th.*

It is not a matter of any practical importance, however, what is the supposed value of this minute fraction. There can be no doubt that every new meridional measurement will furnish material to the geometers for new investigations and new results; nor is it probable that it will soon be settled what is the true length of any meridian. The lecture of *Sir John Herschel*, which contains the strictures upon the correctness of the French survey above noticed, itself furnishes evidence of the instability of the so-called constants of the earth's figure. The original text of the lecture gives, under date of September 30, 1863, one set of values for the polar axis; the semi-axes of the equatorial ellipse, and the positions of these semi-axes; the ellipticity of the French meridian; and the (inferential) error of the metre; and an appendix of October 11, in the same year, gives another set complete; while a postscript to the appendix, without date, informs us of still more recent modifications of these last determinations.†

* *Mr. Delambre*, who arrives, by a different course of reasoning, at the same result, *i. e.*, fifteen toises for the possible error, observes that the mean should be taken between observation and calculation, *viz.*: 7·5 toises; which would reduce the probable error of the metre to the 1,920th; say the 2,000th part of an inch.

All these deductions, however, as well as those of *de Schubert* and *Clarke*, are founded on the assumption that the earth's quadrants, if not equal, are at least truly elliptical in curvature. But this appears not to be the case with any of them; so that the only way to arrive at absolute certainty in regard to the length of any one, would be to measure it actually from end to end—a method manifestly impracticable.

† The numbers here referred to are those of *Capt. Clarke*, already mentioned. *Sir John Herschel*, like *Prof. Piazz Smyth*, and some others, seems to have indulged a sort of fond hope that the earth's axis would ultimately prove to measure exactly 500,500,000 British inches. His own determination had made it 500,497,056. *Capt. Clarke's* first result reduced

The suggestion of Sir *John Herschel*, that the polar axis of the earth would have been a more felicitous choice as the basis of a metrical system than the length of any meridian, or than any other known natural dimension, will probably be undisputed in any quarter. This is a dimension which is entirely unique; and being the common axis of all meridians, belongs equally to all the world. But if absolute accuracy is insisted on, it will no more be found in this axis than in the meridians, though the magnitude of the probable error may be less. Sir *John Herschel* himself gives seven different determinations; one from *Airy*, one from *Bessel*, three from *de Schubert*, one from himself, and one from *Clarke*. The difference between the maximum and the minimum among these, is more than 15,000 feet. Col. *Everest*, as stated above, has given forty-two, found by taking different arcs by pairs. These he has subsequently combined in various ways, for the purpose of obtaining mean results; the number employed to obtain a single mean varying from five to nine. The difference between the maximum and the minimum of the means thus obtained, is nearly 19,000 feet. The extremes of course differ much more widely, as do those found by *de Schubert*.

Though it is to be regretted that the earth's axis had not been originally selected as the basis of the world's system of weights and measures, yet the regret arises rather from a sense of the superior beauty, simplicity and scientific perfection in the ideal of a system founded upon such a basis, than from any practical disadvantage resulting from the choice actually made. No matter what may be the numbers used hereafter to express the length of the earth's axis or of its meridians, the metre will always be the length of the platinum bar definitely declared to be its representative by the international scientific commission of 1799.

Besides the objection to the scientific basis of the metrical system, other objections of a more practical nature have been urged against some of its particular features. All these have been brought together in the exhaustive report of Mr. *Adams*, already referred to, and may be briefly examined as they are presented there.

Mr. *Adams* first objects to the *length* of the metre, as being too great for convenience as a unit of measure. "Perhaps," he says, "for half the occasions which arise in the life of every individual for the use of a linear measure, the instrument, to suit his purposes, must be portable, and fit to be carried in his pocket. Neither the metre, the half metre, nor the decimetre is suited to that purpose." Without stopping to inquire how far the foot-rule may be more fit to carry in the pocket than the decimetre, it is sufficient here to observe that, if a measure of three decimetres in length (which is almost exactly a foot) should be found to be

this result to 500,490,432; and it was gratifying, therefore, to be able to announce in the postscript that his later corrections "had made the polar axis approximate *still more nearly* to 500,500,000 inches." The final determination, published in 1866, however, carries it farther off from this favorite value than any of the foregoing, since it gives it at 500,482,296.

more convenient and more portable than an entire metre, anybody who chooses to carry such a rule in his pocket can do so; and the facility with which measures made with such a rule may be converted into metres is such, that it is impossible to find any solid ground for objection in the fact that such a conversion will be necessary. But if, for common purposes, this measure continues to be called a foot, (or a foot-metric, to distinguish it for the time from the old foot,) and the conversion is not practised at all, it is not apparent what harm can arise; while, for any purpose of computation, the conversion could be immediate; so that all the advantages of the metric system could be secured, without really encroaching sensibly in this respect upon the ordinary habits of men. The new foot would fall short of the old one by not quite 19-100ths of an inch. This difference is considerably less than exists now between the Danish and the Austrian foot measures, on the one hand, and the British, on the other; the first being in excess by 36-100ths of an inch, and the second, by nearly 45-100ths; or between the British and the Swedish, which latter is in deficiency by 36-100ths; or between the British foot and the foot of Frankfort-on-the-Maine, which falls short by eight-tenths of an inch. This new foot, moreover, perfectly accords with the foot measure of Switzerland, which has been made by law exactly three decimetres.

But though it is thus apparent that, for practical purposes, a measure may be used which is, for all the ends of convenience, equivalent to the foot, and which is still in perfect harmony with the metric system, it does not appear that there is any want of practical portability in the metre itself. Notwithstanding Mr. *Adams's* defense of the foot-rule, on the ground that it is "an instrument fit to be carried in the pocket," it is presumed that few people so carry this instrument, except in a folding form; and in this form the metre may be carried, and is in point of fact carried, with equal convenience. Moreover, inasmuch as the yard is found, after all, to be the measure best adapted to the occasional uses for which necessity arises in the ordinary occurrences of life, the portable measure most frequently found in men's pockets is a *tape* measure, of the length of one or two yards—a measure which is put up in a form greatly more compact than any rule can be.

Besides the foot-metric, of three decimetres, it is perfectly practicable and permissible, if any one desires it, to use a rule of a half metre or of a quarter metre, or of any other fraction of a metre in length. If the acceptance of the metric system were to impose upon a people any mental or legal incapacity ever to divide anything more into two equal parts, we might do well to hesitate long before laying ourselves under such a disability. But it is to be presumed that people will do what they find it convenient to do, after as well as before the introduction of the new system. They will gain from this system all the power which it derives from its decimal relations, and all the benefit which results from being in harmony with the rest of the world, without losing any real advantage which other relations may furnish in the ordinary transactions of life.

Mr. *Adams* objects to the metre, that it does not correspond with any

known dimension of the human body ; and that thus its substitution for the unit at present in use in the United States will deprive the people of a resource which they now find convenient for ascertaining the length of the unit in the absence of a rule measure. But the foot, certainly, cannot be determined by any such reference to the person, though it is possible that the yard may be. As a general rule, the yard found by holding one end of a string between the thumb and finger of the arm extended horizontally, and "marking the point which can be brought to touch the centre of the lips, (facing full in front.*)" in accordance with the direction given by Sir *John Herschel*, will be a short yard ; and the face should be inclined to the direction opposite the extended arm, to make it true. But if, instead of marking the point which touches the centre of the lips, the experimenter carry the string across the lips as far around as the angle of the jaw, he will have pretty accurately a metre. Or, otherwise, if the string be carried horizontally across the breast, the point characteristic of that part of the person, on the side opposite the extended arm, will mark the metre. The present value of the foot, notwithstanding its name, is, in England and the United States, manifestly a derivative from the yard, of which it is a third part. The length of the human foot is neither a third part nor a fourth part of the arm, measured (as above) to the lips ; but it is, with a very near approach to exactness, the fourth part of a metre ; so that a man of ordinary stature and normal proportions could easily reproduce the metre with sufficient accuracy for ordinary uses, by simply measuring his uncovered foot.*

* Mr. *Adams* rather exaggerates the importance of that property of a unit of measure which identifies it in some way with the human person. And one of his illustrations of this importance seems to prove something which he did not intend. "When the Russian general, *Suwarrow*," he observes, "in his "*Discourses under the Trigger*," said to his troops, 'a soldier's step is an arsheen,' [archine,] he gave to every man in the Russian army the natural standard of the long measure of his country. No Russian soldier could ever afterward be at a loss for an arsheen." Without having the text of the "*Discourses*" at hand, one may well doubt whether the rough old general were not here designing to convey an idea purely military, rather than to contribute to the elementary education of his troops ; the idea, that is to say, that a step having a length equal to an archine, is the step which will enable men to get over the most ground in a given time and with the least fatigue ; and is, therefore, a soldier's step, or the step a soldier should cultivate. And his reference to the archine was apparently a reference to something the soldier was presumed to know already, rather than to something he ought to learn. But if an archine, which is twenty-eight inches, is a soldier's step, how comes it that a farmer's step, in the United States and England, is thirty-six inches ? The fact is, that the pace, whether an archine or a good yard in length, though commonly spoken of as a natural unit, is an artificial step, which cannot be usefully employed without some practice. And whoever, equally without practice, attempts to ascertain the length of the yard in the manner mentioned in the text, will find that his results are variable, and few of them exact.

None of the (average) dimensions of the human frame answer perfectly to any determinate values of the prevailing measures of length ; and it is as easy to find modes of deriving approximate metrical lengths from the person as any other.

Mr. *Adams* speaks of the antiquity of the foot as indicating that it has been determined in its length by some inherent property of convenience which belongs to no other measure. But looking at the world's entire history, the foot seems to be of comparatively modern origin. The cubit was the unit of the antediluvian world. The foot was not known to *Noah* when he laid the keel of the ark; nor to *Cheops* when he raised the great pyramid of *Ghizeh*; nor to *Moses* when he erected the tabernacle in the wilderness; nor to *Solomon* when he built the first temple at Jerusalem; nor to *Zerubabel* when he built the second. It is evident, therefore, that there is nothing in the nature of things which makes it necessary that the foot should be retained.

Mr. *Adams* regards it as a serious defect of the metric system that it provides only one series of weights for all commodities, and one series of measures for all capacities. The early weights and measures of Great Britain on the other hand, which her colonists carried with them to the western continent, embraced double units both of weight and of measure, related to each other as the specific gravities of corn and wine. If a counterpoised vessel on being filled with wine required a pound weight avoirdupois to restore the equilibrium, the same vessel filled with corn would require a less weight to do the same; and this determined the pound Troy. In like manner, if the wine which fills a vessel of given capacity, balance a pound weight avoirdupois, a vessel of larger capacity will be required in order that the grain which fills it may produce the same equiponderance. The advantages which such an adjustment apparently affords, seem to have impressed Mr. *Adams* very forcibly; yet he admits that, in England, the proportion has been lost in the measures of capacity; and that, as it respects weight, it is practically of no use in the United States. Three or four years after his report was presented, the British Parliament abolished the double measures of capacity altogether. Among the minor arguments alleged by Mr. *Adams* in favor of the preservation of both, that is the double units both of weight and capacity, is the rather curious one that retail dealers may sometimes (as in the case of drugs) buy by avoirdupois weight, and make a profit in selling by Troy. Innkeepers, also, (such was at the time the case in Pennsylvania,) may, under this system, buy their ale by the larger measure, and sell advantageously at retail by the lesser. "In both cases," he remarks, "the difference of the measure forms part of the compensation for the labor and skill of the apothecary, and part of the profits necessary to support the establishment of the publican." Such an argument in the mouth of a statesman excites surprise. What has the legislature to do with compensating the labor and skill of the apothecary, or helping the tavern-keeper to keep up his establishment? And why should the dry-goods dealer be prevented from selling (by a process unperceived by the customer) four yards for the fair price of five; when the druggist is enabled (by a similar expedient) to sell four *pounds* for the price of five? To the world of the present day, there can be no doubt that the existence of two systems of weight and measure side by side, however con-

nected by proportion, is simply a nuisance ; and argument upon this point would be thrown away. The additional suggestion of Mr. *Adams*, that the two standards of weight serve to verify each other ; being in the known ratio of 5,760 to 7,000, so that in case one be lost and not the other, the latter will serve to replace the former, is too unsubstantial to require remark. The occurrence of the contingency here spoken of as possible, is wholly inconceivable.

Mr. *Adams* further says that the metric system, while giving the weight of a single substance (distilled water) when the bulk is known, gives the weight of nothing else ; whereas the old British weights and measures gave the weight of both corn and wine. Mr. *Adams* has here selected for censure, a point in which one of the greatest merits of the metric systems lies. So far from giving the weight of nothing else but water, it gives the weight of everything else. This matter has been already so fully illustrated that it may here be dismissed without further argument.

It is made still further a matter of reproach to the metric system by Mr. *Adams*, that the system has not yet been extended—he would make it appear to have been found impracticable to extend it—to geography and navigation (latitude and longitude) or to the division of the circle : and that this failure furnishes pretty strong evidence that the theoretically simple may not seldom be at war with the practically useful.

To this reproach it may be replied that the extension of the system to the subjects mentioned *has* been made and found to be advantageous ; but that it has not seemed indispensable or even very important to press a change in this respect ; inasmuch as the terrestrial co-ordinates and the division of the circle were precisely the matters, (and except the Arabic numerals and the symbols of algebra the only matters,) upon which all the world were in perfect harmony before the metric system was conceived. To press the change as to other matters would be to promote unity. To introduce it here would, for the time being, simply create diversity. The time may possibly come when the sexagesimal division of the circle will be abandoned for the centesimal ; but this will only be by common consent, after the metric system in respect to other matters shall have been universally received. Centesimal tables of the trigonometrical functions were constructed, and circular instruments were centesimally divided, during the early years of the first French Republic.

That they were found convenient by those who used them is sufficiently established by the testimony of *Delambre*, who makes the following statement : “ Trois de nos quatre cercles étoient devisés en grades ou degrés décimaux valant chacun $360^\circ \div 400 = 0.9^\circ = 54' = 3240''$. ” *Cette division est beaucoup plus commode pour l'usage du cercle répétiteur, et le seroit également pour les verniers de tous les instruments quelconques. Plusieurs personnes tiennent encore à l'ancienne division par habitude et parce qu'elles n'ont fait aucun usage de la nouvelle ; mais aucun des ceux qui les ont pratiquées toutes deux, ne veut retourner à l'ancienne.*”*

* *Delambre, Base du système métrique décimal, Tome I, p. 98.*

Delambre proceeds to explain how the ordinary tables may be used with centesimally divided instruments, or centesimal tables with the ordinary instruments; sexagesimal arcs (or for present purposes we may say *nonagesimal*) being converted into centesimal by adding one-ninth to the numerical expressions of their value; and centesimal reduced to nonagesimal, by subtracting one-tenth. It appears, therefore, not to be true, as imputed, that the non-extension of the decimal system into trigonometry, geography and astronomy, is an evidence of its ill-adaptation to the objects of those sciences: this non-extension has been owing, on the other hand, to the fact that there already exists a uniformity of practice throughout the world in the methods of these sciences, which it is not important immediately to disturb; with the additional fact that the existing system is so interwoven with every form of scientific publication, that it could not be suddenly changed without an inconvenience as universal as is the present prevalence of the system itself.

The final objection of Mr. *Adams* to the metric system is found in its nomenclature. Yet, regarded as a scientific creation, he looks upon this nomenclature as admirable. His objection to it is, that the people cannot possibly be made to use it. "The theory," he says, "of this nomenclature is perfectly simple and beautiful. Twelve new words, five of which denote the things, and seven the numbers, include the whole system of metrology; give distinct and significant names to every weight, measure, multiple, and subdivision of the whole system; discard the worst of all the sources of error and confusion in weights and measures, the application of the same name to different things; and keep constantly present to the mind the principle of decimal arithmetic, which combines all the weights and measures, the proportion of each weight or measure with all its multiples and divisions, and the chain of uniformity which connects together the profoundest researches of science with the most accomplished labors of art and the daily occupations and wants of domestic life in all classes and conditions of society. Yet this is the part of the system which has encountered the most insuperable obstacles in France. The French nation have refused to learn or repeat these twelve words. They have been willing to take a total and radical change of things; but they insist upon calling them by old names. They take the metre, but they must call one third part of it a foot. They accept the kilogramme; but instead of pronouncing its name, they choose to call one half of it a pound. Not that the third of a metre is a foot, or the half of a kilogramme is a pound; but because they are not very different from them, and because, in expressions of popular origin, distinctness of idea in the use of language is more closely connected with habitual usage than with precision of expression."

This quotation is given at full length, because it presents, in the first place, the merits of the nomenclature so distinctly as to render any words on that point unnecessary; and because, secondly, it exhibits very precisely the nature of the difficulty which is said to render the system objectionable. A reply might be, that things are things and names are

names. It is the things that are of primary importance: names occupy only the secondary rank. If, as Mr. *Adams* says, the things are accepted while the names are rejected, be it so for the time. The main point is gained. The names will be accepted later. The illustration which Mr. *Adams* himself brings from the history of his own countrymen in their treatment of the Federal coinage and its nomenclature, was in point with him then, and is in point with us now. The people knew the name "dollar" but they knew nothing of dimes, cents and mills. Their smaller moneys were shillings and pence; and these denominations were in their mouths for years after the creation of the Federal currency, and are not even yet forgotten. Mr. *Adams* says, "It is now nearly thirty years since our new moneys of account, our coins and our mint, have been established. The dollar under its new stamp has preserved its name and circulation. The cent has become *tolerably* familiarized to the tongue wherever it has been made by circulation familiar to the hand. But the dime having been seldom, and the mill never, presented in their material images to the people, have remained so utterly unknown, that now, when the recent coinage of dimes is alluded to in our public journals, if their name is mentioned, it is with an explanatory definition to inform the reader that they are *ten cent pieces*; and some of them, which have found their way over the mountains, by the generous hospitality of the country have been received for more than they were worth, and have passed for an eighth, instead of a tenth part of a dollar." Since this paragraph was written, the people of the United States have learned perfectly the name as well as the appearance of the dime; and, during the same period, the French people have equally learned the nomenclature of their system of weights and measures. The lesson was in their case an especially hard one to learn, and one which took much time, because it was forced upon them without any preliminary preparation. That is an error which will nowhere be repeated in the future.

It is evident, throughout the report of Mr. *Adams*, that his own unwillingness to see an attempt made toward the introduction of the metric system of weights and measures into the United States, grew out of the popular resistance made to its acceptance by the people of France; and a belief, from which he seems to have been unable to escape, that it never would, or at least would not soon, become dominant in the country in which it originated. The state of things which existed at the time his report was written was not ill suited to produce such a belief. It is described by him in the following words: "The result of the most stupendous and systematic effort ever made by a nation to introduce uniformity into their weights and measures, has been a conflict between four distinct systems.

- " 1. That which existed before the revolution.
- " 2. The temporary system established by the law of 1st August, 1793.
- " 3. The definitive system established by the law of the 10th December, 1799: And,
- " 4. The *usual* system, *permitted* by the decree of 12th February, 1812.

"This last decree is a compromise between philosophical theory and inveterate popular habits. Retaining the principle of decimal multiplication and division for the legal system, it abandons them entirely in the weights and measures which it allows the people to use."

This "usual system" permitted the employment of old names, and also of old divisions, both binary and duodecimal. But it did not restore the old *things*; for all the weights and measures allowed were derived from the metric units. Mr. *Adams* wrote in 1821. The prospect of the speedy triumph of the system even in France appeared to him at that time to be anything but encouraging. Sixteen years later, however, the *usual* system was abolished; and since that time—that is, for more than thirty years—nothing more has been heard of that resistance on the part of the French people to the use of metric weights and measures, or of their refusal to learn their nomenclature, or of their discontent with the decimal principle, which Mr. *Adams* evidently believed to be hopelessly confirmed, and which so much excited his apprehension.

Mr. *Adams's* able report embodies, and presents in a forcible manner, all the material objections which have ever been raised against the metric system; and in answering him, all other objections are answered at the same time. It is worth while now to cite his own personal opinions of the merits of this system, and his hopes as to the future which may yet be in reserve for it, in spite of the (to his view) unpromising aspect of things in his own time. He remarks, "The French system embraces all the great and important principles of uniformity which can be applied to weights and measures, but that system is not yet complete. Considered merely as a labor-saving machine, it is a new power offered to man, incomparably greater than that which he has acquired by the new agency which he has given to steam. It is, in design, the greatest *invention* of human ingenuity, since that of printing; but like that, and every other useful and complicated invention, it could not be struck out perfect at a heat. Time and experience have already dictated many improvements of its mechanism, and others may, and undoubtedly will, be found necessary for it hereafter. But all the radical principles of uniformity are in the machine, and the more universally it shall be adopted, the more certain will it be of attaining all the perfection which is within the reach of human power." By the "improvements," here mentioned as having been made in the system, are intended probably those modifications which were authorized by the law of 1812—the law which created the "usual system." Subsequent experience has shown that those modifications were mainly unnecessary; and that the system, though originally "struck out at a heat," was produced as nearly perfect as any creation of human origin is ever likely to be. The lesson of this experience must be kept still in mind in reading the following glowing eulogy of the system, from another part of the same report:

"This system," says Mr. *Adams*, "approaches to the ideal perfection of *uniformity* applied to weights and measures, and whether destined to succeed or doomed to fail, will shed unfading glory upon the age in

which it was conceived, and upon the nation by which its execution was attempted, and has been in part achieved. In the progress of its establishment there, it has been often brought in conflict with the laws of physical and moral nature—with the impenetrability of matter, and with the habits, passions, prejudices and necessities of man. It has undergone various important modifications. It must undoubtedly still submit to others, before it can look for universal adoption. But if man be an improvable being; if that universal peace, which was the object of a Saviour's mission, which is the desire of the philosopher, the longing of the philanthropist, the trembling hope of the Christian, is a blessing to which the futurity of mortal man has a claim of more than mortal promise; if the Spirit of Evil is, before the final consummation of all things, to be cast down from his dominion over men, and bound in the chains of a thousand years, the foretaste here of man's eternal felicity; then this system of common instruments to accomplish all the changes of social and friendly commerce, will furnish the links of sympathy between the inhabitants of the most distant regions; the metre will surround the globe in use as in multiplied extension; and one language of weights and measures will be spoken from the equator to the poles."

The period thus clearly foreseen, at which all the world, on a subject so nearly affecting the daily and hourly interests of its inhabitants of every race and country, shall be "of one language and of one speech," is certainly much nearer than the eloquent prophet could have anticipated when these words were written. "Opinion," which he elsewhere says, "is the queen of the world," without whose favoring voice no great measure of public policy can be pressed to a successful consummation, has marched with a rapidity which he certainly by no means contemplated; so that, already, that uniformity for which he longed, but hardly dared to hope, except as a crowning glory of the millenium, has been reached by nearly half the population of the civilized and Christian world, and promises at no distant day to prevail universally.

In anticipation of the period at which the metric system shall be introduced among the peoples by whom it has not yet been received, it becomes the governments of those peoples to make such preparation for the changes which it will bring, as shall prevent the inconvenience and confusion which attended its first introduction into France. To this end, first of all, the principles of the system should be thoroughly taught in all the schools for the education of the young. Let but a single generation be thus instructed, and the obstacle to change which has been found in men's inveterate habits of thought, will be practically removed. Let there then be a progressive introduction of the denominations of the system into different branches of the public service successively; beginning with those which concern international relations, as for instance, the collection of the revenue from customs, and the foreign postal and telegraphic service; and subsequently advancing to matters of internal administration, such as the construction of public works, the management of the navy yards, of the military posts, and of mines operated by gov-

ernments, the statements of the census and statistical bureaux, &c. ; so that at length, when the people shall have become sufficiently familiarized with the system, by seeing these examples of its application, it may be extended to commerce and to the ordinary affairs of private life. An additional advantage may be secured, by adopting the practice of stating, for a time at least, all quantities or values specified in public documents, in duplicate form ; the first being the metric numbers, and the second the numbers belonging to the familiar system. By means of this expedient, every such document will become an educational lesson, and the people will become familiarized with the system almost without knowing it. This is, in general, the plan which, by a unanimous vote of the international conference of weights, measures and moneys, held in Paris in June, 1867, was recommended for adoption to the governments of all nations which have as yet taken no steps looking to the introduction of the metric system among them. It is to be hoped that the recommendation will not be permanently disregarded by any.

While these pages are passing through the press, there has been received a compendious treatise on the metric system, prepared by Prof. *Leone Levi*, of London, Honorary Secretary of the Metric Committee of the British Association, and published in June, 1871, from which are derived some additional facts in regard to the progress of metrological reform. The most important of these relates to British India. It is stated that, by an act passed in 1870 with the approval of the home government, the kilogramme is adopted as the unit of weight in India, and the metre as the unit of length ; and the Governor-General in Council is empowered to cause the new weights and measures to be used by any government office or municipal body or railway company ; and to *require* that, after a date to be fixed, these weights and measures shall in every district be the basis of all dealings and contracts in any specified business or trade.

In Wurtemberg, Bavaria and Baden, additional progress has been made by laws, initiated or passed in 1868 and 1869, toward the introduction of the metric system in full.

In Roumania, the metric system has been established by law since January 1st, 1865.

On the American continent, the metric system has been established in the Republic of Equador since 1856, and in Peru since 1863. In Venezuela, the government proposed to Congress the introduction of the system as long ago as 1856.

From the report of the International Conference of 1867, on weights and measures and coinage, it appears that Turkey has given a metric value to her unit of length, the Turkish archine having been made equal to three-fourths of a metre.

From Prof. *Levi's* work, and from other sources, are derived the following numbers, representing the populations which have adopted the metri

system in full, and those which have adopted metric values for their units.

I. Peoples adopting the metric system in full.			II. Peoples adopting metric values.		
State.	Year.	Population.	State.	Year.	Population.
France.....	1866	38,067,064	Wurtemberg.....	1867	1,778,396
French Colonies.....	1866	2,921,000	Bavaria.....	1867	4,824,000
Holland.....	1868	3,638,467	Baden.....	1867	1,438,000
Dutch Colonies.....	1868	22,453,000	Hesse.....	1852	854,319
Belgium.....	1866	4,839,094	Switzerland.....	1860	2,510,494
Spain.....	1868	16,642,000	Denmark.....	1850	2,413,000
Spanish Colonies.....	1868	2,030,000	Austria.....	1867	34,861,000
Portugal.....	1863	4,349,000	Turkey.....		35,360,000
Italy.....	1868	25,527,000	Total.....		84,039,209
North German Confeder..	1867	29,910,517			
Greece.....	1864	1,348,522			
Roumania.....	1867	4,605,000			
British India.....	1866	150,767,851			
Mexico.....	1865	8,218,080			
New Granada.....		2,800,000			
Ecuador.....	1858	1,040,000			
Peru.....		3,374,000			
Brazil.....	1867	9,858,000			
Uruguay.....		387,000			
Argentine Confederation..	1869	1,736,000			
Chili.....	1868	1,908,000			
Total.....		336,419,595			
			III. Countries in which the metric system is permissive.		
			State.	Year.	Population.
			Great Britain.....	1871	31,817,108
			United States.....	1870	38,525,729
			Total.....		70,342,837

IV. In Sweden (population [1867] 4,195,631) and Norway ([1867] 1,701,478 = total 5,897,159) the decimal division has been adopted, without as yet the metric values.

As the peoples in the second class above may be regarded as committed to the ultimate adoption of the metric system in full, we may count as already enlisted on this side of the question, a total of about 420,000,000.

On the 26th of July, 1871, an act making the metric system of weights and measures henceforth compulsory in Great Britain, was lost by a majority of only five votes in the House of Commons.

ARTICLE 509. The metric system of weights and measures adopted for international purposes.

510. The metric system to be employed in negotiations and intercourse between governments.

511. Customs duties to be levied by metric weight and measure, and postal tariffs to be regulated by metric weight.

512. Standard units of length and of weight.

513. Copies of the standards to be made and carefully preserved, as standards of verification.

514. Working standards, or standards for daily use, to be constructed and periodically verified.

515. Standard measures of capacity.
 516. Certain denominations, not decimally related to the units of length, capacity, surface and weight, to be allowed.

The metric system of weights and measures adopted for international purposes.

509. All contracts for the purchase of movable property of any description, and all accounts rendered for the sale or delivery of such property, when the parties to the transactions belong to different nations, shall be expressed, as to the quantities specified, in denominations of the system of weights and measures known as the metric system; and the denominations of such metric system named in the following tables shall be taken as equivalent to the values set opposite to them, in the denominations of the several systems of national weights and measures therein named.

Tables exhibiting the Metric Equivalents of the principal Units of Weight and Measure at present in use in the civilized world.

NOTE.—From these Tables are omitted the names of all countries in which the metric system of weights and measures already prevails. The authority mainly relied on in computing these equivalents has been ALEXANDER'S "*Dictionary of Weights and Measures*," Baltimore, 1850; a work of remarkable comprehensiveness and singular accuracy. Use has also been made of the "*Rapports et Proces-verbaux du Comité des Poids et Mesures et des Monnaies*," Paris, 1867; and of the "*Second Report of the Standards-Commission*" of the British Parliament, London, 1869.

I. *Equivalents of Units of Weight.*

Country.	Non-metric Units in Metric Units.	Metric Units in Non-Metric Units.
Austria	1 Pfund. = 0.56004 kilog.	1 Kilogramme = 1.7857 Pf.
Baden.	1 Pfund. = 0.500 "	1 " = 2.000 Pf.
Bavaria.	1 Pfund. = 0.500 "	1 " = 2.000 Pf.
Denmark.	1 Pund. = 0.500 "	1 " = 2.000 P.
Great Britain.	1 Pound (avoir.) = 0.4536 "	1 " = 2.2046 P.
Prussia.	1 Pfund. = 0.500 "	1 " = 2.000 Pf.
Russia.	1 Founte. = 0.4090 "	1 " = 2.445 F.
Saxony.	1 Pfund. = 0.500 "	1 " = 2.000 Pf.
Sweden.	1 Skalpund. = 0.42514 "	1 " = 2.353 Sk.
Switzerland.	1 Livre. = 0.500 "	1 " = 2.000 L.
United States.	1 Pound (avoir.) = 0.4536 "	1 " = 2.2046 P.
Wurtemberg.	1 Pfund. = 0.500 "	1 " = 2.000 Pf.

II. *Equivalents of Units of Length.*

Country.	Non-Metric Units in Metric Units.		Metric Units in Non-Metric Units.	
Austria	1 Fuss	= 0.316 Metre.	1 Metre	= 3.1634 F.
Baden	1 Fuss	= 0.300 "	1 "	= 3.3333 F.
Bavaria	1 Fuss	= 0.2919 "	1 "	= 3.4263 F.
Denmark	1 Fod	= 0.3139 "	1 "	= 3.1862 F.
Great Britain.	1 Foot	= 0.3048 "	1 "	= 3.2809 F.
Prussia	1 Fuss	= 0.3139 "	1 "	= 3.1862 F.
Russia	1 Sagene	= 2.13353 "	1 "	= 0.4687 S.
Saxony	1 Elle	= 0.5965 "	1 "	= 1.6651 E.
Sweden	1 Fot	= 0.2933 "	1 "	= 3.3774 F.
Switzerland..	1 Pied	= 0.3000 "	1 "	= 3.3333 P.
United States	1 Foot	= 0.3048 "	1 "	= 3.2809 F.
Wurtemberg.	1 Fuss	= 0.2855 "	1 "	= 3.4135 F.

Itinerary Measures.

Country.	Non-Metric Units in Metric Units.		Metric Units in Non-Metric Units.	
Austria	1 Meile	= 7.58647 Kilometres ..	1 Kilometre	= 0.1318 Meile.
		= 5.55765 Miles-Metric.	1 Mile-Metric	= 0.1917 "
Baden	1 Meile	= 8.8889 Kilometres ..	1 Kilometre	= 0.1125 "
		= 5.9259 Miles-Metric.	1 Mile-Metric	= 0.1687 "
Bavaria	1 Meile	= 7.4259 Kilometres ..	1 Kilometre	= 0.1347 "
		= 4.9506 Miles-Metric.	1 Mile-Metric	= 0.2021 "
Denmark	1 Miil	= 7.5316 Kilometres ..	1 Kilometre	= 0.1327 Miil.
		= 5.0211 Miles-Metric.	1 Mile-Metric	= 0.1990 "
Great Britain.	1 Mile	= 1.6093 Kilometres ..	1 Kilometre	= 0.6214 Mile.
		= 1.0729 Miles-Metric.	1 Mile-Metric	= 0.9321 "
Prussia	1 Meile	= 7.5325 Kilometres ..	1 Kilometre	= 0.1328 Meile.
		= 5.0217 Miles-Metric.	1 Mile-Metric	= 0.1992 "
Russia.....	1 Viersta	= 1.06578 Kilometres ..	1 Kilometre	= 0.9374 Viersta.
		= 0.71119 Miles-Metric.	1 Mile-Metric	= 1.4061 "
Saxony	1 Meile	= 6.7945 Kilometres ..	1 Kilometre	= 0.1472 Meile.
		= 4.5297 Miles-Metric.	1 Mile-Metric	= 0.2208 "
Sweden	1 Mil	= 10.6593 Kilometres ..	1 Kilometre	= 0.0938 Mil.
		= 7.1052 Miles-Metric.	1 Mile-Metric	= 0.1407 "
Switzerland .	1 Lieue	= 4.8000 Kilometres ..	1 Kilometre	= 0.2083 Lieue.
		= 3.2000 Miles-Metric.	1 Mile-Metric	= 0.3125 "
United States	1 Mile	= 1.6093 Kilometres ..	1 Kilometre	= 0.6214 Mile.
		= 1.0729 Miles-Metric.	1 Mile-Metric	= 0.9321 "
Wurtemberg.	1 Meile	= 7.4074 Kilometres ..	1 Kilometre	= 0.1350 Meile.
		= 4.9333 Miles-Metric.	1 Mile-Metric	= 0.2025 "

III. *Equivalents of Units of Liquid Capacity.*

Country.	Non-Metric Units in Metric Units.		Metric Units in Non-Metric Units.	
Austria	1 Maas	= 1.415 Litres ..	1 Litre	= 0.7067 M.
Baden	1 Maas	= 1.500 "	1 "	= 0.6667 M.
Bavaria	1 Maaskanne	= 1.069 "	1 "	= 0.9355 Msk.
Denmark	1 Potte	= 0.956 "	1 "	= 1.0552 P.
Great Britain.	1 Gallon	= 4.5404 "	1 "	= 0.2202 Gals.
Prussia	1 Quart	= 1.1448 "	1 "	= 0.8735 Qts.
Russia	1 Stoff	= 1.5374 "	1 "	= 0.6505 St.
Saxony	1 Kanne	= 0.9365 "	1 "	= 1.0678 K.
Sweden	1 Kanna	= 2.6149 "	1 "	= 0.2824 K.
Switzerland..	1 Pot	= 1.5000 "	1 "	= 0.6667 P.
United States	1 Gallon	= 3.7852 "	1 "	= 0.2642 Gals.
Wurtemberg.	1 Maas	= 1.3371 "	1 "	= 0.5444 M.

IV. *Equivalents of Units of Dry Capacity.*

Country.	Non-Metric Units	Metric Units.	Metric Units in Non-Metric Units.
Austria	1 Metze	= 61.494 Litres.....	1 Litre = 0.01626 M.
Baden	1 Sester	= 15.000 "	1 " = 0.06667 S.
Bavaria	1 Metze	= 37.059 "	1 " = 0.02618 M.
Denmark	1 Skjæppe	= 17.392 "	1 " = 0.05750 Sk.
Great Britain.	1 Bushel	= 36.373 "	1 " = 0.02753 Bu.
Prussia	1 Scheffel	= 54.961 "	1 " = 0.18190 Sch.
Russia	1 Tchetverik	= 25.336 "	1 " = 0.03947 Tch.
Saxony	1 Scheffel	= 103.899 "	1 " = 0.00962 Sch.
Sweden	1 Kubikfot	= 25.956 "	1 " = 0.38526 Kf.
Switzerland..	1 Quarter	= 15.000 "	1 " = 0.06667 Q.
United States	1 Bushel	= 35.238 "	1 " = 0.02838 Bu.
Wurtemberg.	1 Simri	= 22.152 "	1 " = 0.04514 S.

Measures of surface and solidity are in general derived from the measures of length, and need not be presented here. Agrarian measures concern local populations chiefly, and have not an important international interest. Wherever the metric system is introduced, the units of agrarian measure now in use will, in the course of time, be superseded; but it is not indispensable that they should be interfered with by legislation immediately.

The metric system to be employed in negotiations and intercourse between governments.

510. In all negotiations, treaties and diplomatic communications of every description, between the governments of different nations, in which it shall be necessary to express quantities by weight, or by measures of length, surface, capacity or solidity, the terms of the metric system shall be employed for the purposes of such expression.

Customs duties to be levied by metric weight and measure, and postal tariffs to be regulated by metric weight.

511. If, among the nations parties to this Code, there be any which shall continue to maintain their national and non-metric systems of weight and measure for purposes of domestic trade and business, such nations shall nevertheless allow and require customs duties to be levied in their ports of entry by metric weight and measure, and shall conform the tariffs of weights of

mailable matter in their post-offices to the denominations of metric weight.

Standard units of length and of weight.

512. The unit of length of the international metric system is declared to be the length, at the temperature of melting ice, of the platinum metre-bar deposited at the palace of the Archives in Paris on the 4th Messidor of the year VII. of the French Republic, by the international committee appointed to fix the length of the definitive metre, and still there preserved. The unit of weight of the same system is declared to be the weight of the platinum kilogramme deposited at the Archives on the same occasion, by the same committee.

Copies of the standards to be made and carefully preserved, as standards of verification.

513. The governments of the nations parties to this Code shall cause copies of the standard units of length and of weight to be constructed and accurately compared with the prototypes in the Archives at Paris, which copies shall be carefully kept in such secure place and in charge of such officers as the several governments may appoint, to be used at distant intervals of time for the verifications hereinafter described, and for no other purpose.

Working standards, or standards for daily use, to be constructed and periodically verified.

514. Copies of the prototype standard units shall be also constructed and accurately compared with the standards of verification provided for in the preceding article, which copies shall be used in the preparation of subordinate standards to be deposited in the principal towns, provinces or districts of each country, for the comparison and regulation of the weights and measures in immediate use among the people. These copies shall be preserved and used with extreme care ; and at intervals of time, to be fixed by law, they shall

be compared with the standards of verification, in order that any alteration which may have been occasioned by use may be detected and allowed for.

Standard measures of capacity.

515. The metric measures of capacity, being immediate derivatives of the linear measures, may be verified by the bulk in cubic centimetres, or the weight in milligrammes, of distilled water which they will hold at a certain temperature. The government of each nation shall establish a system of verification of such measures, with the advice of scientific and practical experts in metrology.

Certain denominations not decimally related to the units of length, capacity, surface and weight, to be allowed.

516. It shall be lawful to use, in ordinary transactions and descriptions, the following non-metrical denominations, with the values severally attached to them :

Weights.

1 ounce = $\frac{1}{16}$ kilogramme = 50 grammes.

1 pound = $\frac{1}{2}$ kilogramme = 500 grammes.

1 quintal = 100 pounds = 50 kilogrammes.

1 ton = 2,000 pounds = 1,000 kilogrammes.

Measures of Length.

1 foot = 10 inches = 30 centimetres = 3 decimetres.

1 rod = 5 metres.

Itinerary Measure.

1 mile = 5,000 feet = 1,500 metres = 300 rods.

TITLE XXII.

LONGITUDE AND TIME.

The use of geographical co-ordinates, for the purpose of fixing the positions of places upon the earth's surface, was first suggested by Hipparchus.* The method seems to have been first practically applied by Marinus, of Tyre, a geographer known to us only by the citations of his work in Ptolemy. Claudius Ptolemy, of Alexandria, who flourished toward the middle of the second century of our era, presented, in his treatise on geography, a pretty full synopsis of the knowledge of his time in regard to this subject, many of his pages consisting simply of dry details of the latitudes and longitudes of particular places. For latitudes, the equator furnishes a natural circle of reference. For longitudes, any meridian may serve as a zero; but in the early history of geographical science, it was thought advisable, and it then seemed possible, to choose such a prime meridian as should allow all longitudes to be measured in a common direction. In the time of Ptolemy, the limit of the habitable world toward the west was supposed to lie in the group of islands called the Fortunate Islands, now known as the Canaries. Through this group he accordingly supposed his first meridian to pass: but its position was apparently defined only by its presumed distance from Alexandria, so that the meridian of Alexandria must be regarded as his actual meridian of reference.

As, in the progress of centuries, geographical knowledge extended and new geographers arose, new meridians were adopted. In the construction of maps and charts, it was natural that authors should pass their meridians of reference through well-known places; as, for instance, the capitals, or chief towns of their own countries. The progress of astronomy contributed moreover to the multiplication of meridians of reference, since convenience would suggest that the tables founded on actual observation should be conformed to the local time at the observatory.

During what are commonly called the dark ages in Europe, astronomy was cultivated chiefly by the Arabians,† whose tables, some of them, are said to have possessed much merit. The first European astronomical tables of importance were those which were prepared in the latter part of the thirteenth century, (published, however, only in 1483,) under the auspices of Alphonse X., King of Castile, and which are known by his name.‡ These were adapted to the meridian of Toledo. The tables of

* *Montucla, Histoire des Mathematiques*, T. I., P. I., L. 4; *Delambre Hist. Astr. Ancienne*, T. II., ch. 15.

† *Ency. Brit.*, Art. *Astron.*

‡ *Montucla*, T. I., P. II., L. I.; *Id.*, T. IV., P. V., L. 7,

Copernicus, in the sixteenth century, were conformed to the meridian of Cracow. These were, somewhat later, improved and republished by Reinhold, under the name of the Prutenic or Prussian Tables. The Alphonsine, Copernican and Prutenic tables were all founded upon ancient and imperfect observations. They were followed by a variety of others, mostly deduced from them; but the whole of these were superseded, early in the seventeenth century, by the publication of the famous tables, called the Rudolphine Tables, in which were presented the results of the long and laborious observations of Tycho Brahe, reduced and arranged by the celebrated Kepler. The meridian of these tables was that of Uranibourg, Brahe's observatory, in the island of Huena. Simultaneously with these, and later, appeared the tables of Longomontanus, (1624,) and of Reinhart, (1630,) referred to the meridian of Copenhagen; of Lansberg, (1632,) referred to the meridian of Goes; of Reinert, (1639,) meridian of Pisa; of Goldmeyer, (1639,) meridian of Nuremberg; of Bullialdus, (1645,) meridian of Uranibourg; of John Newton, (1657,) meridian of London; of Count de Pagan, (1657,) meridian of Paris; of Street, (1661,) meridian of London; of Lever, (1669,) meridian of Rome; of Wing, (1669,) meridian of London; of De la Hire, (1687,) meridian of Paris; of Halley, (1749,) meridian of Greenwich; of Lacaille, (1758,) and of Lalande, (1759,) meridian of Paris; and many others.

Besides the general tables here referred to, there were published in many places, from a very early period, ephemerides of the movements of the principal heavenly bodies. Montucla* enumerates fifty or more publications of this kind, referred to a variety of meridians, as Vienna, Ulm, Berlin, Nuremberg, Venice, Bologna, Augsburg, Rouen, Dantzic, Paris, London, etc. These publications were generally intended to cover a series of years, and were not periodical. Others, however, were issued annually, the earliest of which, computed for the meridian of Paris, appeared in Paris in 1678, under the name of the "*Connaissance des Temps*." This has since been uninterruptedly continued to the present time. A similar publication, which also still continues, was commenced in Berlin, in 1766, under the title of the "*Astronomisches Jahrbuch*." Another annual of the same character appeared in Vienna, in 1757, and still another, in Milan, in 1775. The annual ephemeris, however, which has had the widest circulation, and has most largely contributed to the uses of navigation, has been the "British Nautical Almanac," which made its first appearance in 1767, under the editorial auspices of the celebrated Maskelyne. This is computed for the meridian of the Royal Observatory, at Greenwich. Since about the year 1850, there has been also published an American work of similar character, under the name of the "American Nautical Almanac."

In so far as the diversity of the meridians employed in tables, ephemerides, maps and charts, affects only the convenience of astronomers or scientific geographers, it is a matter of comparatively small importance. In practical navigation, the case is very different. To the navigator, sim-

* *Montucla*, T. IV., P. V., L. 7.

plicity is of the highest importance; not only because computations at sea should be unembarrassed by any unnecessary multiplication of figures, but because diversity in the expression of the positions of the places on the earth's surface, tends to confusion of thought and to possible error. Notwithstanding this, there has hitherto been no successful attempt to establish uniformity in the construction of nautical charts and tables. It is possibly true that the introduction of astronomical ephemerides into navigation has tended on the other hand rather to promote diversity than to favor uniformity. Until after the discovery of America, geographers seem uniformly to have followed Ptolemy in placing the first meridian among the Canaries. And though the Alphonsine Tables referred astronomical time to the meridian of Toledo, yet the same work contained a list of geographical latitudes referred to the original Ptolemaic first meridian.

About the close of the fifteenth century, a great impulse was given to ocean navigation by the discovery of the western continent; and in consequence of the establishment by Pope Alexander VI., in 1494, of the famous line of demarcation between the Spanish and the Portuguese—an imaginary line drawn three hundred and seventy leagues westward from the Azores, the geographers and hydrographers of those nations began to adopt the meridian of these islands as the first meridian of their charts. This is seen in the maps of Juan de la Cosa, given by Von Humboldt, in his *Examen Critique*—maps constructed about the close of the fifteenth century, and dated A. D. 1500. But the exact position of this meridian was not determined by local observation. It seems rather to have been deduced by an approximate computation or estimate of its distance west from Lisbon or Cadiz. In progress of time, the English began to use the meridian of London, and later, of Greenwich, and the French, that of Paris; while the Dutch, by the advice of their distinguished countryman, Simon Stevin, commenced, about 1600, referring their nautical longitudes to the Peak of Teneriffe.

During the sixteenth century, also, Gerhard Kauffmann, (Mercator,) the author of the projection which bears his name, and which has been found practically so valuable, placed the first meridian of his charts in the island, Del Corvo, the northernmost and smallest of the Azores, for the reason assigned that the magnetic line of no variation passed at that time through it.

The confusion arising out of so great a variety of usages began at length to be felt as a serious evil. Cardinal Richelieu, the enlightened minister of Louis XIII., in the early part of the seventeenth century, resolved to make an effort to bring about a better state of things. He accordingly invited a congress of astronomers and mathematicians to assemble at Paris, in the spring of 1630, to agree, if possible, upon a common meridian. As a result of this conference, the island of Ferro, the most southwesterly of the Canaries, was fixed upon; and a royal order establishing this decision was promulgated in July of the same year.* Unfor-

* *Gehler's Physickalisches Worterbuch. Band VI., 1.*

tunately, however, the exact longitude of Ferro, with reference to any point of the continent of Europe, was at that time unknown. The determination of its position was never made by authority; and at length, in 1724, it was resolved to assume it at 20° West from Paris. Borda and Pingré give the longitudes of the easternmost and westernmost points as $20^{\circ} 17'$ and $20^{\circ} 30'$. To name the island, therefore, without naming a specific point in it, was to leave the meridian still unfixed, even had its general position been better known. At any rate, this effort to establish uniformity was productive of no practical result.

The absence of any recognized law, or any uniformity of usage on this subject, among navigators, still continuing toward the end of the seventeenth century, is illustrated by the following passages from the work entitled "*L'Art Naviger*," by Father Dechaies, a work mentioned favorably by Montucla, (T. I., p. 658,) for its precision and clearness, and which was published in 1677:

"Les Astronomes," says Duchales, "prennent ordinairement pour premier meridien celui du lieu ou ils font leur demaire, et les Pilotes le Meridien du lieu d'ou ils partent.

"Les Anciens Geographes n'ont pas deu prendre pour premier Meridien celui des dernieres terres vers l'Orient; parcequ'ils n'étoient pas arrivez jusques au bout de ce cote-la; qu'a cause la longitude dans le Ciel, se comptant de l'Occident a l'Orient; celle de la terre se devoit prendre du mesme cote. Il estoit donc a propos de le placer dans les terres les plus Occidentales. Quelques-uns des Modernes le mettent aux Isles Fortunées, ou a l'Isle de Fer, la plus Occidentale des Canaries. Les autres aux isles du Cap Nord, comme a celle de Saint Nicholas. Mais cette diversité d'opinions est de peu d'importance; puisque nous pourrons toujours prendre pour le premiere Meridien de nostre Navigation celui des derniers terres qui nous avons veus, ou le premier Meridien de la carte de laquelle nous nous servent."

Since the perfection of the methods of determining longitudes by lunar observations, and by chronometers, navigators have naturally referred their longitudes to the meridians for which the ephemerides of the sun and moon are computed. Of the nautical ephemerides now published, the English Nautical Almanac, the American Nautical Almanac, and the *Connaissance de Temps* are most used. But the American work employs, for all those determinations which concern navigation, the meridian of Greenwich; so that if, in the selection of a meridian to be recommended to the acceptance of all the world, we are to limit ourselves to a choice between the meridians already in use, we cannot hesitate to give the preference to Greenwich as involving the inconvenience of change to the smallest number.

It may be objected that the place of Greenwich on the earth is marked by no great and distinctive physical feature. A feeling that the place of the first meridian should be so distinguished, though it has been always more or less prevalent, has no substantial foundation, either as it respects the usefulness of such a meridian or the facility of its determination. That an island like Del Corvo is small and isolated, or that a peak like Tene-

riffe is prominent and conspicuous, might seem, at first thought, to add something to the claim of such a point to be taken as the origin of longitudes. But to the astronomical observer these circumstances are of no importance. The meridian of his observatory is marked for him by a simple trace; and this in general drawn upon the surface of an artificial monument. In the selection of a common meridian for the world, there is nothing, therefore, to restrict the most perfect freedom of choice, so far at least as the mere configuration of the earth's surface is concerned.

On the other hand, it is in favor of the adoption of some meridian already largely in use, that there are in existence many laboriously prepared tables necessary to the computation of nautical ephemerides, constructed with reference to such meridians, all of which will have to be transformed, if a new meridian is adopted. This circumstance, and the additional one that Greenwich is familiar to a larger number of navigators than any other meridian of reference, must be regarded as decisive in favor of that as a common first meridian, unless such a selection should be found to be attended with some countervailing disadvantage thus far overlooked. If such a disadvantage exists, it must spring from the connection of longitude with time.

The natural day begins at any place at the rising of the sun; and as the sun is always rising somewhere, the day is always somewhere beginning. The "day of the month" expresses the number of times the sun has risen within the month, up to that day, inclusive. If a given day of any month, say the first of January, begins at sunrise at a given place, the same day of the month will begin sooner in absolute time at places east, and later in absolute time at places west. The difference is one hour for every fifteen degrees of longitude, or twelve hours for half the circumference of the sphere. If, therefore, we suppose the first of January to begin for all places east of the assumed place at the sunrise next preceding in absolute time the sunrise of the same day at this assumed place, and for all places west of the assumed place, at the sunrise next following the same sunrise, we shall, by pushing the computation half a circle both ways, arrive at the conclusion that, in longitude one hundred and eighty degrees from the starting point, the first of January begins both twelve hours earlier and twelve hours later than the beginning of the same day at that point. This later beginning must be counted the second, if the earlier was the first; but the same consequence will not follow if the earlier was counted as the thirty-first of December. In this latter case, the count must be supposed to be changed, from the thirty-first of December to the first of January, somewhere east of the given place, but not so far east as one hundred and eighty degrees. It is then evident that, if there is to be any uniformity in the regulation of the calendar of the month, and any exactness in chronological determinations, some meridian must be agreed upon at which the change of count in the monthly calendar shall begin. Such a meridian will involve to those who live near it the inconvenience that the same natural day will count a unit more in the month to those who live west of it, than to those who live east, though the actual distance between them may be insignificant. And

on this account it is desirable that the meridian thus selected to mark the beginning of the day should lie as far as possible in the open ocean.

Now it happens that the meridian opposite to Greenwich fulfills this condition almost as nearly as any which can be selected. It crosses no portion of any continent except the extremity of Northeastern Siberia—an inhospitable region, now peopled by savages, and incapable of ever becoming an important portion of the civilized world. Its course, then, lies among the petty islands of the great South sea : and it merely touches the eastern angle of New Zealand, the only habitable land of importance which it approaches. This meridian seems, therefore, to be very favorably situated to serve the purpose of dividing the days of the calendar. The meridian opposed to Hamburg, or Altona, might possibly be a little more so, since it passes through Behring's Straits, nearly clearing both continents ; and it leaves the larger portion of the Pacific islands to the west. Practically, however, the claims are nearly balanced, and the advantages which Greenwich possesses in other respects have been pointed out above.

Though the natural day begins at sunrise, the astronomical day begins at the passage of the mean sun over the meridian of the place ; and the civil day begins twelve hours earlier, or at the inferior culmination immediately preceding. Taking the meridian of Greenwich, therefore, as the first meridian of longitude, it becomes the regulator of time ; so that when the sun passes the Greenwich meridian on a given day, the same day is twelve hours advanced on the west side of the meridian opposite, but has not yet begun, and will not begin for twelve hours more, on the east side of the same meridian. This explains the provisions of the Code defining the day.

ARTICLE 517. The meridian of Greenwich to be the prime meridian.

518. Maps, charts, nautical tables, &c., how to be prepared.

519. Public vessels to be furnished with tables and charts conformed to the meridian of Greenwich, and required to keep their logs in accordance therewith.

520. The Gregorian style of reckoning to be employed.

521. Of the length of the year, and of leap years.

522. The term "year," in contracts and written instruments, how to be understood.

523. Divisions of the year.

524. The day defined.

The meridian of Greenwich to be the prime meridian.

517. In the determination of positions upon the

earth's surface, by co-ordinates of latitude and longitude, the meridian passing through the observatory at Greenwich, England, shall be taken as the prime meridian; and longitudes shall be reckoned from that, eastwardly and westwardly. one hundred and eighty degrees, to the meridian opposite, or three hundred and sixty degrees, to the same meridian again. And in all legislative, executive and judicial acts, and in public records of every description, in which the positions of places are defined, or limits designated, or boundaries fixed, by means of co-ordinates of latitude and longitude, the longitudes stated shall be the longitudes east or west from the meridian of Greenwich; and when longitudes are given in such documents, without specification of the meridian from which they are measured, they shall be understood to be longitudes east or west from the meridian of Greenwich.

Maps, charts, nautical tables, &c., how to be prepared.

518. All maps, charts, nautical and astronomical tables, and other publications designed for the use of navigators, which may be prepared and put into circulation by authority of the government of any nation, shall be conformed, as it respects the reckoning of longitude, to the provisions of the last article.

Public vessels to be furnished with tables and charts conformed to the meridian of Greenwich, and required to keep their logs in accordance therewith.

519. All sea-going vessels employed, in any capacity, in the service of any nation, shall be furnished with charts, tables, and such other aids to navigation as may be necessary, prepared as required in article 518; and the commanders of all such vessels shall be required, in keeping their logs, to state all their longitudes, determined by observation or computation, according to the values of the same as referred to the meridian of Greenwich.

The Gregorian style of reckoning to be employed.

520. Time shall be computed according to the Gregorian style of reckoning now prevalent in Western Europe and in America, according to which the current year is the one thousand eight hundred and seventy-first since the epoch; and the first day of January of every year hereafter shall be taken to be the first day of the year.

Of the length of the year, and of leap years.

521. Every year consists of three hundred and sixty-five days, except those whose numerical designations are exactly divisible by four, without remainder, which years consist each of three hundred and sixty-six days; except that, of the centurial years, or the final years of the successive centuries, only those as to which the number of the centuries completed is divisible by four, consist of three hundred and sixty-six days; and the other centurial years consist of three hundred and sixty-five days only.

The length of the tropical year is nearly three hundred and sixty-five days and a quarter, but falls short of this value by a fraction equal to 11·232426 minutes. Julius Cæsar, in his reformation of the calendar, which took place forty-six years before the Christian era, disregarded this minute quantity, and treated the year as being equal to three hundred and sixty-five and a quarter days exactly. Each common civil year being thus a quarter of a day too short, the intercalation of an entire day, or four quarters of a day, at the end of every fourth year, was presumed to maintain, with sufficient accuracy and permanence, the adjustment of the equinoxes and solstices to the places which they originally occupied in the calendar.

The error of the Julian year produces no very perceptible effect, when a limited period only of years is considered; but the same is not true when the period extends to several centuries. Eleven minutes are 11·1440ths of a day. In four hundred years, this becomes 4400·1440ths of a day, which is equal to three days and one-eighteenth of a day. Or, if we use the more exact figures, given above, the error of the Julian year, multiplied by four hundred, amounts to three days and twelve one-hundredths of a day. The Julian intercalation of one day in four years, therefore, displaces the equinoxes in the calendar by more than three days in four centuries.

At the time of the assembling of the Council of Nicæa, A. D. 325, the vernal equinox fell upon the twenty-first day of March. Toward the close of the sixteenth century, it was observed to fall on the eleventh.

In the year 1582, Pope Gregory XIII. published the calendar which is known by his name; in which, by adding ten to the count of every day in every month, from the fourth day of October, in that year, inclusive, onward, he restored the equinox to the place it occupied in the calendar in the year 325. This was a piece of reformation uncalled for in any interest either ecclesiastical or secular, and it had the effect of preventing, for a long time, the acceptance of his style of reckoning, and what is of more importance, of his rules for maintaining the adjustment of the calendar months to the seasons, by the Protestant nations of Europe, and by those adhering to the church of the East. These rules constitute a truly valuable improvement, and their simplicity, no less than their importance, would have secured for them universal favor and adoption at a very early period, in spite of the jealousies which were sure to be awakened by anything proceeding from Rome which should bear the appearance of an attempt to dictate to the world, had they not been accompanied by the large and unnecessary change above mentioned, in the absolute reckoning of the day.

As things actually fell out, the Italian States (mostly), with Spain and Portugal, adopted the Gregorian calendar from the day (October 4, 1582,) named for its commencement, in the Papal Bull. France adopted it two months later, calling the day following the ninth of December, the twentieth, and so onward. In the same year, the matter was discussed at Augsburg, in the Diet of the German Empire; and the Catholic States of Germany adopted the new calendar in the year following.* The Protestant States, however, clung to the old calendar; and the consequence was that, in parts of the country where the population was generally mixed, there arose a good deal of confusion and discord. This state of things continued for more than a century; but at last the Protestants gave way, and, in the year 1700, the new calendar was introduced throughout all Germany, the day following the eighteenth of February being called the first of March. At the same time, the new calendar was adopted in Denmark and in Holland; and in 1701, it was adopted also in the Protestant Cantons of Switzerland, the day following the thirty-first of December being called the twelfth of January. The increase in count was now eleven days, instead of ten, because the centurial year 1700 had not been reckoned a leap year under the Gregorian system. England accepted the new calendar in 1752, the day following the second of September in that year being called the fourteenth. In the following year, Sweden did the same, calling the day after the twenty-eighth of February the twelfth of March.

The Julian calendar now continues to be maintained only by Russia, and the adherents of the Greek church generally. Since there is no longer any possibility of securing uniformity of practice in the reckoning of time, but by universal acquiescence in the Gregorian calendar, it is greatly to be hoped that the enlightened government of the Russian Empire will not long delay the introduction of the desired change among their people.

* *Bond's Handy Book of Dates*, pp. 18, 19.

The term “year,” in contracts and written instruments, how to be understood.

522. Whenever the term “year” or “years” is used in any statute, deed, contract, verbal or written, or in any public or private instrument whatever, the year intended shall be understood to consist of three hundred and sixty-five days; the half year, of one hundred and eighty-two days; and the quarter of a year, of ninety-one days; and if, within the limits of any period so computed the added day of leap year shall fall, such added day shall not be counted as enlarging the number of days of that period.

Division of the year.

523. The year shall continue to be divided, as at present, into twelve months, which months shall retain the names by which they are at present known, and each month shall consist of the same number of days as are assigned to it in the calendars now in use among all Christian nations, viz :

January, ...	31 days.	June, ...	30 days.
February, ...	28 “	July, ...	31 “
in common yrs.,		August, ...	31 “
or, in leap yrs.,	29 “	September, ...	30 “
March, ...	31 “	October, ...	31 “
April, ...	30 “	November, ...	30 “
May, ...	31 “	December, ...	31 “

And whenever the term “month” shall be used in any statute, deed, contract, verbal or written, or in any public or private instrument whatever, this term shall be construed to mean a calendar month, in accordance with the foregoing scheme.

In the reformed calendar of Julius Cæsar, as originally constructed the months were made to consist of thirty-one days and thirty days alternately, beginning with March.* As the common year consists of but three hundred and sixty-five days, the final month of the year, on this plan, falls a day short of thirty days in common years, and contains fully thirty only in leap years. Had the alternation been inverted, making the first month to consist of thirty days, and the second, of thirty-one,

* *Encycl. Brit., Art. Calendar.*

and so on, no month would ever have fallen short of thirty days, or have exceeded thirty-one.

The name of Julius was given to the month Quintilis, in honor of the great reformer. Augustus afterwards gave his name also to the month Sextilis; and the Roman Senate, in a spirit of contemptible sycophancy, stole a day from February, already too short, to add to August, that the month named after the reigning Emperor might not be a less important one than that which had received its name from his illustrious predecessor.

The distribution of the days of the year among the months is, therefore, at present entirely anomalous. Moreover, the introduction of the intercalary day of leap year at the end of the second month of the year, rather than at the end of the year itself, is a source of considerable inconvenience, especially in connection with the calendar of the church. The following scheme for the better distribution of the days of the year among the months, and the transfer of the quadrennial intercalation to the close of the year is, therefore, presented as worthy of consideration.

The year to be divided into sextiles, each of two months. Each sextile to be made up of a first month, of thirty days, and a second month, of thirty-one days; with the exception of the last sextile, in which the second month has only thirty days in common years, and thirty-one days in leap years, as follows:

<i>First Sextile.</i>	{ January 30 days.		<i>Fourth Sextile.</i>	{ July 30 days.
	{ February 31 "			{ August 31 "
<i>Second "</i>	{ March 30 "		<i>Fifth "</i>	{ September.....30 "
	{ April 31 "			{ October.....31 "
<i>Third "</i>	{ May 30 "		<i>Sixth "</i>	{ November.....30 "
	{ June 31 "			{ December 30 "
				{ Or, in leap year.31 "

The day defined.

524. In order to prevent confusion of dates, in consequence of differences of local times, it is to be understood:

First, that the civil day shall begin, at each place, twelve hours of mean solar time before the passage of the mean sun over the meridian at that place, and shall end twelve hours of mean solar time after such meridian passage.

Secondly, that, at the moment of mean solar meridian passage at Greenwich on the first day of January, the day shall be accounted the first day of January throughout the world; it being noon at that moment in the meridian of Greenwich, afternoon throughout all the one hundred and eighty degrees of longitude eastward from Greenwich, and before noon throughout all the one hundred and eighty degrees of

longitude westward from Greenwich ; and the same shall be true for every other day of the year : that is to say, the moment of mean solar meridian passage at Greenwich shall be that in which the day is of the same name throughout the world, whatever may be the degree of advancement of the day, by local time, in different longitudes.

So long as the entire extent of the known world scarcely exceeded in longitude a third part of the earth's circumference, there was no danger that an error of a day could be committed in assigning the date of an event. Nor was the possibility of such an error considerable even after the route to the Indies had been discovered by the way of the Cape of Good Hope. But when the opposite route, by Cape Horn, had been successfully explored, and the Spanish navigators, who had followed this course, met the Portugese, who had come the other way, in the Philippine Islands, it was found that they differed in their reckonings of time by an entire day.

So long, however, as the enlightenment of the world was mainly concentrated in Europe, or extended on the western continent but little beyond the Atlantic coast, the possibilities of confusion in chronology, for want of a universally received definition of the beginning and ending of the calendar day, were not great. The case is quite different at present, when the great islands of Australia are occupied by flourishing British colonies, and both shores of North America are peopled by an enterprising race, engaged in prosecuting extensive commercial enterprises in both hemispheres. It is becoming, therefore, a matter of greater importance every day, that there should be established some universal rule for defining the calendar day for all the world. The reasons why the meridian of Greenwich should be fixed upon, rather than any other, for the purposes of this definition, have been already assigned in the Article relating to longitude.

TITLE XXIII.

SEA SIGNALS.

ARTICLE 525. A signal code to be devised by an international committee.

526. The use of the international signal code to be enjoined upon all ships, for all communications by signal, except such as may be of a confidential nature.

527. Apparatus and printed instructions required for the use of the international signal code, to be provided.

A signal code to be devised by an international committee.

525. Within one year after the adoption of this Code, there shall be appointed a joint commission of competent persons, to fix upon a common system of signals to be used for purposes of communication between vessels at sea; such commission to consist of three members from each nation.

The use of the international signal code to be enjoined upon all ships, for all communications by signal, except such as may be of a confidential nature.

526. The signal system, fixed upon as provided in the last article, shall be used in all sea-going ships, public or private, bearing the national character of any of the nations parties to this Code, for all signal communications, except those which it may be necessary, in the public interest, to transmit confidentially.

Apparatus and printed instructions required for the use of the international signal code, to be provided.

527. Every sea-going ship, public or private, bearing the national character of any of the nations parties to this Code, must, before going to sea, be furnished with

all the apparatus necessary to be used, in the employment of the international signal code, for communications at sea ; and also with full and complete printed instructions for the use of the same.

All signal codes, whether for sea service or for land service, rest upon the same fundamental principles. A signal is a demonstration of some kind, having a conventional significancy, and designed to assist in conveying ideas from one person to another. Where distance intervenes between the persons communicating, the signals must be addressed to the eye or to the ear. In either case, a distinction may be made between signals which are momentary or evanescent, and such as may be made permanent for any length of time, at will.

To the class of evanescent signals belong most of those which depend on motion. Some such may be seen in common life, in universal use ; as, for instance, beckoning with the hand, nodding or shaking the head, &c. ; and, in systematic signal codes, the waving of flags, the flight of rockets, and the report of fire-arms, possess the same character. Permanent, or more properly, lasting signals are such as remain unchanged to perception during a sensible period of time, which may be protracted at the pleasure of the exhibitor. Examples of these are hoists of flags, or prolonged blasts of steam-whistles or fog-trumpets, or attitudes assumed by the person himself who gives the signal.

The simple motions, sounds or displays employed in signal codes, are called elementary signals. The number of these is, in the nature of things, limited. No code of any comprehensiveness could be formed consisting of uncombined elementary signals only. A few elements will, however, form a very large variety, when they are associated together in groups. Groups of this kind are called combination signals. Such groups may be constructed in several modes ; as, first, by *combination* proper, where, from a given number of elements, say six, there are formed assemblages of a smaller number, as of threes, of which no two shall be alike in all their elements ; secondly, by *permutation*, where the same combination is made to furnish as many signals as there are different orders of succession in which its elements can be disposed ; and thirdly, by *arrangement*, in which a very small number of elements may be made to furnish a very large number of signals, by repeating one or more of the elements several times in the same signal, and differently disposing the elements among themselves. (*Myer's Manual of Signals*.)

It may be said, generally, that it is not desirable to employ a large number of elementary signals in a signal code ; also, that the principle of *arrangement* applied to a few elements will furnish more satisfactory results than permutation and combination only, applied to a larger number.

Codes of signals may be formed to signify letters, in which case communications may be made in any form of words, as by telegraph ; or to signify numbers, which may then be employed to designate messages previously prepared, and inserted in their order in a dictionary. The ad

vantage of the first system is, that it leaves communication entirely free ; and that of the second, that it economizes time, by conveying many words through a single number. A complete system should embrace both methods ; the second, for that numerous class of communications the necessity of which is of frequent recurrence ; and the first, for communications the nature of which cannot be anticipated.

The dot and line telegraphic alphabet illustrates the advantage of limiting the number of elementary signals employed in any system. By the principle of arrangement, two characters, or, at most, three, (a long line, a short one, and a dot,) suffice, in that instance, for the construction of an entire alphabet of signals, perfectly distinct from each other, and easily fixed in the memory. This alphabet, in itself, would form an amply sufficient signal code to enable two vessels at sea to communicate with each other, by means of steam-whistles, or by the more or less prolonged exposure and concealment of any visible object.

There are already in use certain signal codes, which have obtained something approaching to an international character. One of these is "The Universal Code," of the late Capt. Marryatt, of the British Royal Navy ; another, "The Code International," of Capt. Reynold, of Paris ; and a third, "The Commercial Code," of the British Board of Trade. The first and second of these use *signal numbers*, as ciphers of signal communication ; while the third, or Commercial Code, uses *signal letters*, permuted in sets of two, three and four each, for the same purpose. (*Myer's Manual of Signals*, p. 51.) The code itself consists of words and sentences, classified according to subjects. Signals are shown by the required hoist of flags, each flag being the recognized symbol of a particular letter. This method originated in 1856, and (as above stated) under the auspices of the British Board of Trade ; since which time, it has been gradually introduced into the war and merchant marine of the principal maritime nations of Europe. As yet, however, it is but partially used in the naval or commercial marine of the United States, although, by a general order of the Navy Department, the code has been issued to all the vessels of the United States Navy, together with the necessary signal flags.

The system of signals which seems to possess the largest capabilities of usefulness is that which is known by the name of the "Chronosemic Method" of signaling, invented by Benjamin Franklin Greene, Chief Clerk of the Bureau of Navigation, of the Navy Department of the United States. This system consists in employing measured intervals of time as the significant symbols, and using audible or visible signals for the purpose only of marking the beginnings and endings of these intervals. Any convenient small interval of time—say one, or three, or five seconds—may be taken as the unit interval ; then this interval doubled, tripled, quadrupled, and so on, will give the successive additional symbols necessary to form the code.

This system possesses several advantages. It permits the use of the largest variety of signal apparatus ; since it is a matter of entire indifference by what means the beginning and ending of each interval is marked, so that the indication is distinct. Thus, for visible signals, by day, the

exhibition and concealment, or the simple waving, of a flag; or the substitution for the flag of any brilliant or conspicuous object; or even, at small distances, a gesture of the arm of the signal officer; or, by night, the flashing of gunpowder, the ascent of a rocket, or the display and eclipse of a signal lantern; and in time of fog, the firing of ship's guns, the blowing of a steam-whistle, or the sounding of a trumpet or bugle, may be resorted to equally and interchangeably, as convenience may suggest. It admits, in the second place, of a very large extension of the circle of available signal distance beyond the practical limit which at present exists; making it possible, for instance, by means of rockets or guns, to convey messages between vessels separated by ten, fifteen, or even twenty or more miles. To these advantages it may be added, that the chronosemic method, from the simplicity of sign-making apparatus which it allows, involves a smaller necessary expenditure than any other; while, for fog-signals especially, it has been found greatly more effective than any plan heretofore devised.

For these reasons, it should seem to be desirable that, in any system of sea signals designed for international use, the chronosemic method, if not adopted to the exclusion of every other, should have an important place. It is better, nevertheless, that the details of the system should be arranged by men of experience, whose practical acquaintance with the merits of different methods entitles them to speak upon the subject with authority, rather than that they should be fixed by arbitrary legislation. This consideration has suggested the provisions of the text above, which leave the precise form of the international signal code to be settled by a committee of experts.

The foregoing remarks apply to signal-systems designed for general or extended communication. Alarm-signals, of which the object is to prevent collisions, or to give warning of danger, may be much more simple; but in order that they may be in the highest degree effectual in securing the safety of vessels at sea, it is important that they should be everywhere the same. In the United States, the Board of Supervising Inspectors of Steamboats have adopted the following rules for fog-horn signals:

“Whenever there is a fog, whether by day or night, the fog signals described below shall be carried and used, and shall be sounded at least every two minutes, viz: steamships, and all other steamers, coasting and river, under way, shall use a steam-whistle; sailing and all other craft propelled by sails, under way, shall use a fog-horn, or equivalent signal; sailing ships, and every other craft propelled by sails, upon the ocean or lakes, shall, when on her starboard tack, blow one blast of her fog-horn, and when on her port tack, she shall blow two blasts of her fog-horn, at all times, at intervals of not more than two minutes; when hove to, she shall blow a general alarm; when at anchor, she shall blow her fog-horn, as at other times, at intervals of not more than two minutes. It shall at all times be the duty of steamers to give to the sailing vessel, or other craft propelled by sails, every advantage, and keep out of her way. Steamships and sailing vessels, when not under way, or which shall be anchored or moored in or near the channel or fairway, as aforesaid, and

not in any port, shall sound the fog-horn, at intervals of not more than two minutes; and all steamers navigating in a fog or thick weather shall sound their steam-whistle at intervals of not more than one minute. Sailing vessels shall at all times, on the approach of any steamer during the night time, show a lighted torch upon that point or quarter to which such steamer shall be approaching; and upon any craft navigating rivers without being in tow of a steamer, such as rafts, flat boats, wood boats, and other like craft, shall sound a fog-horn, at intervals of not more than two minutes; and all steamers navigating rivers in fog or thick weather, shall sound their steam-whistles, at intervals of not more than one minute."

PART IV.

PROVISIONS FOR THE PRESERVATION OF
PEACE.

- ARTICLE 528. Limit of permanent military force.
 529. Equipments, and military reserves.
 530. "Time of peace" defined.
 531. When militia may be called out.
 532. Notice of dissatisfaction, and claim of redress.
 533. Answer to be given.
 534. Joint High Commission.
 535. High Tribunal of Arbitration.
 536. Each nation bound by Tribunal of Arbitration.
 537. Nations violating provisions to be resisted by
 all.
 538. Annual conference of representatives of na-
 tions.

Limit of permanent military force.

528. In time of peace, the number of persons employed at any one time in the military service of a nation, whether intended for land or sea, shall not exceed in number one for every thousand inhabitants.

The military establishment of Europe, during peace, has, in round numbers, 3,000,000 of men, and when placed on a war footing, it swells to 5,000,000. These men are all withdrawn from industrial pursuits, where they could contribute to the comfort and wealth of mankind. Their support requires the labors of as many more; so that it may be set down, that the standing armies of that continent impose upon the nations burdens equal to the labors of 10,000,000 of able-bodied men. The whole population of that quarter of the world is 240,000,000, of which it is computed that one in five is able to do the full day's work of a man: that is, 48,000,000 in all. Therefore, one-fifth at least of the flower of Europe is set aside to make ready for war. This is an unnecessary waste of force. No nation is benefited by it; all are burdened. The burden can be taken off, by common consent. The only point to be considered is, the minimum to which the force can be reduced.

A large standing army is not only the enormous burden that it has been described, but it is a provocative to war. The arming of a nation should be looked upon very much as the arming of individuals. A man may keep arms in his house, to be used on occasions, but if he walks

abroad, always armed to the teeth, he speedily gets into a quarrel ; so with a nation. The peace of society would certainly be endangered by the general practice of wearing arms. It was once so. And since social manners have been benefited by a general disarmament of individuals, it should seem that, for a similar reason, national manners would be benefited by a like process.

Examples of partial national disarmament are not wanting. The treaty between the United States and Great Britain, made at the close of the last war between them, stipulated that neither should keep ships of war upon the great lakes that divide them. The treaty of Paris, which closed the Crimean war, provided for the disarmament of Russia, in the Black sea.

The object of a military establishment is security, internal and external. The standing army of the United States is 30,000, giving one soldier to every thirteen hundred inhabitants. Yet these 30,000 men are scattered over a territory larger than that of any European State, and they have to keep watch of numerous Indian tribes, and to garrison many fortresses ; a greater number probably in proportion to the population than those of any other nation in the world. It is true, that this country has no dangerous neighbors ; but if a general disarmament should be adopted, the most powerful European State would hardly be a dangerous neighbor to the weakest. For the purpose of internal security, one armed guardian of the peace to every thousand persons should seem to be sufficient, acting in conjunction with the militia, which should chiefly be relied on for security against internal commotion.

The building and arming of fortresses could hardly be regarded with apprehension, inasmuch as they are defensive. Ships do not, it is true, fall within the same category, for they may be regarded as movable fortresses, but they are limited in their operations. To bind a nation not to build them and lay them up, can scarcely be considered essential to the security of states.

Militia should be regarded as the strong arm of nations, both for internal peace and external defense. For the support of the civil power, in the execution of the laws, no other force is so natural and proper. It is cheap, ready and efficient. For national defense against external attack, it may, upon emergency, be converted into formidable armies. The last war between France and Prussia has shown how powerful a force a citizen soldiery may be made. In France, the national guard has on many occasions been the defender of order. In the United States, the militia has not only supported the civil power in executing the laws, but it has formed the nucleus of an army of volunteers of the most effective kind.

Equipments, and military reserves.

529. The last article shall not prevent a nation from building and arming, in its discretion, fortresses and ships of war, or from organizing, arming, and, for not more than one month in each year, drilling all or any

portion of its able-bodied men between twenty and forty years of age, as a force of militia, to be called into active service, as provided in article 531.

“Time of peace” defined.

530. By the “time of peace,” mentioned in article 528, is to be understood that period during which Austria, France, Great Britain, Germany, Italy, Russia, Spain and the United States are at peace with each other.

When militia may be called out.

531. Any nation may call its militia into active service to enforce its laws, suppress insurrections against its authority, repel invasions of its territory, or execute article 537 of this Code.

See Constitution of the United States, Art. I., sec. 8, subd. 14.

Notice of dissatisfaction, and claim of redress.

532. If any disagreement, or cause of complaint, should arise between nations, the one aggrieved must give formal notice thereof to the one of which it complains, specifying in detail the cause of complaint, and the redress which it seeks.

Answer to be given.

533. Every nation, which receives from another, notice of any dissatisfaction, or cause of complaint, whether arising out of a supposed breach of this Code, or otherwise, must, within three months thereafter, give a full and explicit answer thereto.

Joint High Commission.

534. Whenever a nation complaining of another and the nation complained of do not otherwise agree between themselves, they shall each appoint five members of a Joint High Commission, who shall meet together, discuss the differences, and endeavor to reconcile them, and within six months after their appointment, shall report the result to the nations appointing them respectively.

High Tribunal of Arbitration.

535. Whenever a Joint High Commission, appointed by nations to reconcile their differences, shall fail to agree, or the nations appointing them shall fail to ratify their acts, those nations shall within twelve months after the appointment of the Joint High Commission, give notice of such failure to the other parties to this Code, and there shall then be formed a High Tribunal of Arbitration, in manner following: Each nation receiving the notice shall, within three months thereafter, transmit to the nations in controversy the names of four persons, and from the list of such persons the nations in controversy shall alternately, in the alphabetical order of their own names, as indicated in article 16, reject one after another, till the number is reduced to seven, which seven shall constitute the tribunal.

The tribunal thus constituted shall, by writing signed by the members, or a majority of them, appoint a time and place of meeting, and give notice thereof to the parties in controversy; and at such time and place, or at other times and places to which an adjournment may be had, it shall hear the parties, and decide between them, and the decision shall be final and conclusive. If any nation receiving the notice fail to transmit the names of four persons within the time prescribed, the parties in controversy shall name each two in their places; and if either of the parties fail to signify its rejection of a name from the list, within one month after a request from the other to do so, the other may reject for it; and if any of the persons selected to constitute the tribunal shall die, or fail for any cause to serve, the vacancy shall be filled by the nation which originally named the person whose place is to be filled.

Each nation bound by Tribunal of Arbitration.

536. Every nation, party to this Code, binds itself to unite in forming a Joint High Commission, and a High Tribunal of Arbitration, in the cases hereinbefore

specified as proper for its action, and to submit to the decision of a High Tribunal of Arbitration, constituted and proceeding in conformity to article 535.

Nations violating provisions, to be resisted by all.

537. If any party hereto shall begin a war, in violation of the provisions of this Code for the preservation of peace, the other parties bind themselves to resist the offending nation by force.

Annual conference of representatives of nations.

538. A conference of representatives of the nations, parties hereto, shall be held every year, beginning on the first of January, at the capital of each in rotation, and in the order mentioned in article 16, for the purpose of discussing the provisions of this Code, and their amendment, averting war, facilitating intercourse, and preserving peace.

War, in all its aspects, has little to recommend it, and almost everything to condemn it. Even the brilliant qualities of courage and self-sacrifice, which it often calls forth, are more than counterbalanced by the cruelty, license and corruption, which are its inseparable concomitants. The history of every nation, after a great war, is a history of demoralization. The moral sense appears to be weakened by the spectacle of brute force contending with brute force; the sensibilities are blunted by indifference to suffering, and familiarity with death; the morals of camps are proverbially loose; the custom of destruction is apt to beget the love of it; and that regard for the rights and feelings of others, which is the chief glory of civilization, is lessened, if not lost, in the struggle for life and mastery in fight.

There may indeed be in nations, as in individuals, a stagnation and corruption worse than death; and war, like pestilence and famine, may be used by the Almighty as a scourge to drive them away, but that proves, not that war is a good thing in itself, but that there may be things that are worse.

Contention does undoubtedly sharpen the intellect, but there may be other kinds of contention than that of mere force. Indeed, that contention which aims to overcome obstacles in nature, to outstrip in manly arts, to look deepest into the mysteries of the world, material and spiritual; contention in letters and arts, in poetry, philosophy and history, in agriculture and navigation, in the refinements of life, the cultivation of taste, and the elevation of morals; that is the contention which really purifies and exalts.

We see that the waste and destruction of war are by no means the greatest of its evils, great as they are. We have before our eyes, at this moment, the devastation of one war, which lasted but a few months, but

which filled Germany with mourners, and covered France with wasted fields, and cities and villages battered and burnt. Half a year of war caused more sorrow and suffering, than a century of peace.

It is, therefore, to be assumed that any well considered scheme, which promises to lessen the number of wars, will receive the countenance of all good men. The scheme of the text is submitted, in the hope that, if it be not accepted, it may at least stimulate inquiry, and lead to something more acceptable, and more efficacious in preserving the peace of the world.

Whether it be possible to prevent war altogether, is the problem of the future, but it cannot be doubtful that the chances and the occasions of its occurrence may be lessened. These articles are framed with that view. They are not the result of mere speculation. Most of them have experience of some sort, greater or less, to recommend them.

The rule requiring a statement of grievances to be made out and submitted to the government complained of, and requiring a definite answer, will tend to prevent wanton and unprovoked attack.

The rule requiring the creation of a Joint High Commission, which shall at least meet to discuss the differences, and seek to reconcile them, follows the precedent set by the United States and Great Britain, in their manner of treating the Alabama Question.

The submission to arbitration has already been stipulated in several treaties. It is an effectual and honorable mode of settling differences.

The manner of selecting arbitrators is suggested by the provisions of the Articles of Confederation of the United States, which were as follows:

“The United States, in Congress assembled, shall also be the last resort, on appeal, in all disputes and differences now subsisting, or that hereafter may arise between two or more States concerning boundary, jurisdiction, or any other cause whatever; which authority shall always be exercised in the manner following: Whenever the legislative or executive authority, or lawful agent of any State in controversy with another, shall present a petition to Congress, stating the matter in question, and praying for a hearing, notice thereof shall be given, by order of Congress, to the legislative or executive authority of the other State in controversy, and a day assigned for the appearance of the parties, by their lawful agents, who shall then be directed to appoint, by joint consent, commissioners or judges, to constitute a court for hearing and determining the matter in question; but if they cannot agree, Congress shall name three persons out of each of the United States, and from the list of such persons each party shall alternately strike out one, the petitioners beginning, until the number shall be reduced to thirteen; and from that number not less than seven nor more than nine names, as Congress shall direct, shall, in the presence of Congress, be drawn out by lot: and the persons whose names shall be so drawn, or any five of them, shall be commissioners or judges, to hear and finally determine the controversy, so always as a major part of the judges, who shall hear the cause, shall agree in the determination; and if either party shall

neglect to attend at the day appointed, without showing reasons which Congress shall judge sufficient, or, being present, shall refuse to strike, the Congress shall proceed to nominate those persons out of each State, and the Secretary of Congress shall strike, in behalf of such party, absent or refusing ; and the judgment and sentence of the court, to be appointed in the manner before prescribed, shall be final and conclusive ; and if any of the parties shall refuse to submit to the authority of such court, or to appear, or defend their claim or cause, the court shall nevertheless proceed to pronounce sentence or judgment, which shall in like manner be final and decisive, the judgment or sentence and other proceedings being in either case transmitted to Congress, and lodged among the acts of Congress, for the security of the parties concerned : *Provided*, That every commissioner, before he sits in judgment, shall take an oath, to be administered by one of the judges of the supreme or superior court of the State where the cause shall be tried, “ well and truly to hear and determine the matter in question, according to the best of his judgment, without favor, affection, or hope of reward.”

Why the several provisions of the text, or others of similar purport and design, should not be adopted, and why, if adopted, they should not answer the purposes intended, it would be difficult to say. National pride would not be touched, national interests would not suffer. War is a national duel. Private dueling, that is, private warfare, has been either abolished, or reduced to a minimum. If it has been found practicable to make individuals settle their disputes in some other way than by the rapier or the pistol, it is not easy to see why any number of individuals composing a nation should not be brought to do the same thing.

DIVISION SECOND.

PRIVATE INTERNATIONAL LAW.

PART V. PRIVATE RIGHTS.
VI. ADMINISTRATION OF JUSTICE.

PART V.

PRIVATE RIGHTS.

TITLE XXIV. CONDITION OF PERSONS.
XXV. PROPERTY.
XXVI. OBLIGATIONS.

The general principles which have been kept in view in framing the Articles of this Division, and which are discussed in more detail in various notes, may be indicated as follows:

1. Each nation ought to be allowed to regulate all transactions affecting the ownership of its own soil. According to some authorities, the capacity of the person, as to taking or conveying, depends on the law of his nationality,—(*Felix, Droit Intern.*;) but this does not seem reasonable.

2. Each nation ought to be allowed to regulate all transactions had within its limits, whether between citizens or foreigners, except such as affect the ownership of the soil of another nation.

These principles are commended alike by their recognition of the fundamental doctrine of the territorial sovereignty of nations, by their affording individuals convenient means of knowing what the law is to which they must conform in every case, and by their being in harmony in these respects with the progress and tendency of modern jurisprudence.

The ancient rule, of oriental origin perhaps, maintains the sovereignty of the laws of a nation over the personal capacity, and, therefore, over the transactions of its own members, even when they are within the territory of another nation, opposing in this respect the territorial sover-

eignty of others. This claim, which even the nations asserting it do not reciprocally yield to other nations, has necessarily given rise to much conflict and uncertainty, for it requires a citizen dealing with a foreigner to ascertain at his peril the fact of the foreigner's alienage, the nationality he bears, and the law of that nationality respecting the personal capacity of the foreigner.

The general rule demanded by modern commerce, and which is gradually forcing its way into recognition in all civilized countries, is, that contracts, and other acts not affecting the soil of a foreign nation, are valid everywhere, if valid by the law of the place where they are made or are to be performed, subject to certain simple restrictions necessary to guard against the use of the law of one place to sanction wrongful evasions of the law of another, or prejudicing creditors in another. This is the only rule which alike satisfies the sovereignty of the State, and puts it in the power of every person to ascertain the rules of law to which he is bound to conform.

In the application of these principles, it is to be observed that, as to any transaction constituted by several acts done in different jurisdictions, the Code must furnish a test to determine which place shall be considered the one where the transaction is had, and that uniformity of rights and remedies should be secured as far as may be, without respect to the difference of *forum*.

The exceptions and qualifications of these leading principles will be considered as they arise, in the Articles of the Division.

TITLE XXIV.

CONDITION OF PERSONS.

CHAPTER XXXVIII. General provisions.

XXXIX. Marriage.

XL. Guardianship and mental alienation.

CHAPTER XXXVIII.

GENERAL PROVISIONS.

ARTICLE 539. Liberty.

540. Foreign slaves become free by entering free nation.

541. Rank and social condition.

542. Personal capacity.

543. Exception.

544. Personal capacity as to immovables.

545. Corporate capacity.

Liberty.

539. Man is not the subject of ownership. Every human being is a person, that is to say, a being capable of acquiring rights and exercising them; and no one is subject to slavery or involuntary servitude except in punishment for crime, whereof the party shall have been duly convicted.

Bluntschli, Droit Intern. Codifié, § 360; *Constitution of the United States*, 13th Amendment. As to the duty of nations to persons coming within their jurisdiction from states which maintain slavery, see Chapter XXIV., on the PERSONAL CONDITION OF FOREIGNERS.

Foreign slaves become free by entering free nation.

540. If, by the law of any nation not a party to this Code, the slavery of human beings is permitted, such slavery is local, and the slaves become free on coming within the jurisdiction¹ of any free nation or state, and such nation or state is bound to respect and defend their liberty.

Bluntschli, Droit Intern. Codifié, §§ 361, 362.

¹ This, by Article 309, includes the region within the lines of an army or fleet, as it should. *Lieber's Instructions*, § 2, ¶ 43.

Rank and social condition.

541. The privileges of rank or social condition are local, and confined to the places¹ within the jurisdiction of the nation by the laws of which they exist, and

affect only acts done and rights acquired within such jurisdiction.

This article does not apply to the rank or privileges of foreign sovereigns ;¹ nor to those of agents of international intercourse ;² nor to such privileges of foreign rank or social condition as a nation may recognize by special regulation.³

¹ They are not confined to the *territory*, but exist in the places which, by Article 309, are subject to extra-territorial jurisdiction.

² See Article 15, concerning the subjection of the sovereign or chief officer of a nation to the jurisdiction of another nation.

³ See Chapters XII. and XIII., concerning PUBLIC MINISTERS and CONSULS.

⁴ Of course, it is competent for any nation to recognize foreign rank or privilege.

Personal capacity.

542. The civil capacities and incapacities of an individual in reference to a transaction with living persons,¹ except so far as it affects immovable property, and subject also, in the case of public funds, corporate stocks and shipping, to the provisions of articles 572 and 573, are governed by the law of the place where the transaction is had, whatever may be his national character or domicile, or the place of his birth.

This is the American rule, as laid down in the case of *Polydore v. Prince*, *Ware's Rep.*, 402, (*U. S. Dist. Ct., Maine*, 1837,) on a review of many authorities ; and it is submitted as the plain and reasonable rule, which will solve many vexed questions. See, also, *Story, Conf. of L.*, §§ 79, 82. It is not, however, the rule now recognized by European international law, although the tendency of opinion is in this direction.

The conflicting rules laid down by other authorities upon this point, may be stated thus :

1. The capacity of a person is governed by the law of the *nation* of which he is a member, even when he is resident in a foreign country. This is the rule declared by the *French Code Civil*, Art. 3, as governing the status of Frenchmen, but there seems to be no corresponding rule as to the status of foreigners in France. (*Westlake, Private Intern. Law*, p. 381.) It is to be sustained, if at all, by the principle that every nation is the best judge of the capacity or want of capacity of its native subjects. But it is a sufficient objection to the recognition of any such rule in international relations, that, although a nation can within its own jurisdiction maintain the rule over its members, it would involve grave

inconveniences to make it reciprocally a rule for nations to apply to all foreigners who may be sojourning within their dominions. See the case of *Saul v. His Creditors*, 17 *Marten's Rep.*, 596; *Livermore's Dissertation on the Contrariety of Laws*.

2. The civil capacities and incapacities of an individual are to be determined by the law of *his domicil*.

Woolsey states this to be the rule, and he says, "According to this rule, if a person changes his domicil, he acquires a new jural capacity, by which, in foreign parts, his actions are to be measured. This is true universally, but in many cases the courts of the earlier domicil, especially if it were the person's native country, have shown a leaning, not to be justified, towards holding him under their territorial law." The reasons which justify this principle are, he says, "(1.) That otherwise extreme inconvenience would result to all nations from a perpetual fluctuation of capacity, state and condition, upon every accidental change of place of the person or of his movable property. (2.) That the person subjects himself and his condition, of free choice, to the law of the place where he resides, by removing there or continuing there."

In harmony with the great increase of intercourse and the extended and important interests dependent upon the transactions of transitory as well as domiciled foreigners, it seems just to apply more fully the general principle, that every nation has jurisdiction over all transactions within its territorial limits, and while removing the general disabilities of aliens, as is already done in so many cases by treaty, it is proposed, on the other hand, to subject the transactions of aliens to the regulation of the ordinary local law in all that does not affect the title to immovable property situate in other jurisdictions.

The general rule will then be, that, subject to the jurisdiction of each nation over all property within its limits, the efficacy of a transaction depends upon the law of the place where the transaction is had.

In this respect we admit the force of the observation of *Story*, (*Confl. of L.*, § 76,) that contracts ought to be governed by the law of the country where they are made, as to the competence of the parties, and as to their validity, because the parties may well be presumed to contract with reference to the laws of the place where the contract is made and is to be executed. Such a rule has certainty and simplicity in its application. See, also, *Fergusson on Marriage and Divorce*, App., 361, cited in *Story, Confl. of L.*, § 97.

Story, Confl. of L., p. 69, &c., states the following rules as being best established, or as at least having the sanction of such authority as gives them superior weight in the jurisprudence of *Continental Europe*.

The acts of a person done in the place of his domicil, in regard to property situated therein, have no other legal effect elsewhere than they have in that place. *Story*, § 64.

The personal capacity or incapacity attached to a party by the law of the place of his domicil, is deemed to exist in every other country, as long as his domicil remains unchanged, even in relation to transactions in a foreign country, where they might otherwise be obligatory.

This rule is founded, according to *Rodenburgh*, upon the inconvenience

which would result from a fluctuating rule of capacity upon every accidental change of place of the person or of his movable property. *Story*, p. 72, § 67. It ought to be observed, however, that the inconvenience of a fluctuating rule is an inconvenience to the individual only, requiring him to ascertain and conform to the law of the place where he may be. It is the most convenient for facilitating commercial transactions and the administration of justice. In case of a change of domicile, these rules would apply in the country of *new* domicile, and perhaps in every country except that of the original domicile. *Id.*, § 70.

Story, upon a review of the authorities, concludes that there is no general rule on the subject admitted by all nations, and that the exceptions conceded by the advocates of the universal operation of the law of the domicile show that no general rule can be adopted which may not work inconvenience to the interests of some countries, institutions or capacities, and that the conclusion is that no nation is obliged to recognize the foreign law of capacity; that the place determines the validity of the act, subject to the right of each nation to refuse to enforce or recognize acts contrary to their laws or policy.

For a recent discussion of the doctrine of personal statute and real statute, see *Exposé et critique des principes généraux en matière de statuts réels et personnels d'après le droit Française*, par F. Laurent, *Revue de Droit International et de Legis. comp.*, 1869, No. 2, 241.

¹ Testamentary capacity is regulated by Chapter XLIV., on WILLS.

Exception.

543. No transaction had by a foreigner with living persons,¹ is voidable on the ground of his infancy, except so far as it may affect immovables, if either the law of his domicile, or the law of the place where the transaction is had, sustains his capacity.

This is the provision of the Prussian law with reference to foreigners' contracts, stated by *Westlake*, (*Private Intern. L.*, p. 383,) who recommends a similar provision for adoption in England. It is proposed here, in order to meet the objection stated by him, and in the case of *Saul v. His Creditors*, (17 *Marten's Rep.*, 596, 5 *Marten's N. S.*) in *Burge's Com. on Colonial Law*, p. 132, and other authorities, of allowing aliens who are beyond the age fixed for majority by the local law, to elude the obligation of contracts on the ground of a foreign disability, with which those with whom they dealt could not be presumed to be acquainted.

In *re Hellman's Will*, (*Law Rep.*, 2 *Equity*, 363,) it was held, that a legacy bequeathed to an infant domiciled abroad might be paid when the infant came of age by the law of the testator's domicile or by the law of the infant's domicile, whichever should first happen, but in the mean time must be dealt with as an infant's legacy, according to the law of the testator's domicile, although, by the law of the infant's domicile, the guardian would be entitled to receive it.

¹ The rule is restricted so as not to apply to wills.

Personal capacity as to immovables.

544. The civil capacities and incapacities of an individual in reference to immovable property, are to be determined by the law of the place where the property is situated.

In the conflict of authority among continental jurists on this point, we take the rule, fully established in England and America, that the territorial laws of each nation must be allowed to govern as to the capacity of those who may take or transfer title to lands. See *Story, Conf. of L.*, § 430.

For the French doctrine as to the extent to which the law of the location of immovables regulates the capacity of the person in respect to immovables, and the rights resulting from transactions in reference to immovables, see *Felix, Droit Intern.*, vol. 1, p. 21.

Demangeat is of opinion that, when once it is clear that the law of the place where the immovables are situated does not exclude the foreigner, in his quality of foreigner, from the right to dispose of or to receive, thenceforth all questions of capacity or incapacity must be determined according to the rules of law applicable to the person of the foreigner. (*Felix, Droit Intern.*, vol. 2, p. 122, note a.)

The objection to the rule allowing the law of the nationality to govern in reference to infancy, is again mentioned under another article.

The following modification of this rule is laid down by *Story, Conf. of L.*, § 104:

Personal disqualifications, arising from the principles of the customary or positive law of the nation of the foreigner, will not be recognized in other countries where the like disqualifications do not exist.

Corporate capacity.

545. Corporations and other artificial persons have no existence beyond the jurisdiction of the power by virtue of which they exist, and have no capacity beyond that which is conferred by the law of such power.

This is the settled doctrine of the American Law of Corporations. *Bank of Augusta v. Earle*, 13 *Peters' U. S. Supreme Ct. Rep.*, 588; *Ohio & Mississippi R. R. Co. v. Wheeler*, 1 *Black*, 286; *County of Allegheny v. Cleveland, &c., R. R. Co.*, 51 *Pennsylvania Rep.*, 228; and other cases collected in *Abbott's Digest of the Law of Corporations*, pp. 336, 567.

Several of the French treaties contain a provision to the effect that corporations, companies and associations, commercial, moneyed and industrial, as well as joint stock companies and societies of limited liability, formed and authorized according to the laws of either nation, have and may exercise their rights and powers, and may appear in court, whether to institute or to defend actions in any place within the territorial limits of the other nation, without any other condition than that of conformity to the laws of such nation.

This provision applies as well to such bodies formed previous to the adoption of the treaty, as those which are thereafter formed.

Treaty of commerce and navigation between France and

The Free Cities of Lübeck, Bremen & Hamburg, } Mar. 4, 1865, Art. XVIII., 9 *De Clercq*, 187.

Grand Duchy of Mecklenburg - Schwerin, —
(extended to the) Grand Duchy of Mecklenburg-Strelitz, } June 9, 1865, " XXI., 9 *Id.*, 295.

Turkish and Egyptian business corporations are authorized to exercise their powers in France. 7 *De Clercq*, 614.

See, also, imperial decrees of February 27, 1861, affecting the relations of France, Luxembourg and Portugal.

It is not, however, thought wise to take such a rule as a general one, but to leave corporations with the powers conferred by the domestic law only, except where such special treaties exist.

CHAPTER XXXIX.

MARRIAGE.

ARTICLE 546. "Marriage" defined.

547. Valid foreign marriages.

548. Void marriages.

549. Capacity and consent.

550. Requisite forms.

551. Public ministers and consuls may solemnize marriages.

552. Criminal offenses.

553. Evasion of home law.

554. Personal, marital and parental rights.

555. Polygamy.

556. Legitimacy.

"Marriage" defined.

546. The term "marriage," as used in this Code, means the union, voluntary and for life, of one man with one woman.

Lawrence's Commentaire sur Wheaton, vol. III. See *Revue De Droit International*, &c., 1870, No. 1, p. 53.

"Marriage is one and the same thing, substantially, all the world over. . . . We regard it as a wholly different thing, a different status

from Turkish or other marriages among infidel nations." Lord Brougham, in *Warrender v. Warrender*, 2 *Clark & Finnelly's Rep.*, 532.

The definition of marriage, as understood by the law of nations, given in *Rock v. Washington*, 19 *Indiana (Kerr) Rep.*, 53, is as follows:

Marriage is the union of one man and one woman, so long as they both shall live, to the exclusion of all others, by an obligation which, during that time, the parties cannot, of their own volition and act, dissolve, but which can be dissolved only by authority of the State.

And it is there added, that nothing short of this is meant when it is said that marriages, valid where made, will be upheld in other States. (Citing *Noel v. Evans*, 9 *Indiana*, 37; *Story's Conflict of Laws*, ch. 5; *Wheaton's Law of Nations*, 137.)

See *Hyde v. Hyde*, *Law Rep.*, 1 *Probate and Divorce*, 130. In this case, the court were in error in supposing, according to the testimony, that a polygamous marriage is valid in Utah. By the act of Congress of 1862, such marriages are illegal. See *Lawrence's Commentaire sur Wheaton*, vol. III., quoted in *Revue de Droit International, &c.*, 1870, No. 1, p. 57.

Valid foreign marriages.

547. Subject to the provisions of Part VI., on the ADMINISTRATION OF JUSTICE,¹ a marriage, valid according to the law of the place where it is contracted, is valid everywhere, and the issue of such a marriage is everywhere legitimate.

This, in so far as it relates to the form of marriage, is the general doctrine, supported by all authorities. And it applies as well to transient as to domiciled persons. 1 *Bishop on Marriage and Divorce*, § 353.

By the French law, the rule is modified by the application, together with it, of the principle that the laws concerning the status and capacity of persons, control Frenchmen, even when resident in foreign countries. *Félix, Droit International*, vol. 2, p. 367.

But there is considerable disagreement of opinion as to what exceptions should be allowed to this general rule. The following exceptions have each the sanction of some authority:

1st. Polygamous marriages. These are excluded by the definition in Article 546. Such obligations of the married state as it may be proper to impose upon the parties to a polygamous union, when the case arises in a Christian country, are provided for by Article 555.

2nd. Marriages which are incestuous by the law of the place where they are drawn in question. *Ponsford v. Johnson*, 2 *Blatchford's U. S. Circuit Ct. Rep.*, 51; *Story on Conflict of Laws*, § 87. But *Parsons* suggests that a question might be made whether it would be held incestuous so far as to avoid the marriage, if within the degrees prohibited by the law of the State in which the question arose, or only if it be kindred who are too near to marry by the law of the civilized world. 2 *Parsons on Contracts*, 599. And *Shelford (on Marriage and Divorce*, 127, 7,) as well as *Bishop (on Marriage and Divorce*, vol. 1, § 389,) intimates the

same opinion. *Huberus*, as quoted by *Story*, (*Conflict of Laws*, § 85,) says, that "a foreign marriage would be void if it were a case of incest within the second degree by the law of nations." It is proposed to disregard this exception, beyond the cases which will be covered by Article 552.

3rd. Personal incapacity. *Savigny* supposes (§ 379) that the personal capacity of the wife is to be judged according to the law of her home. *Westlake* submits, that from those bars which depend on what is called incapacity, whether absolute, as from Romish orders, or relative, as from degrees of affinity, the parties must be free both by the law of the place where the marriage is celebrated, and by that of the husband's domicile; that if they are so free, their marriage will be good, always and everywhere.

4th. Opposition of parents or guardians. It is the opinion of *Westlake*, that the *lex loci contractus* may reasonably adopt any consent of parents or guardians, required for the marriage of either party in his or her domicile, as the condition without which it will not give binding force to the forms of the contract. The English courts, however, have persevered in maintaining that no other consents than those which the *lex loci contractus* demands for the marriage of its own subjects, are necessary for the marriage of foreigners celebrated within its jurisdiction. *Westlake*, *Private Intern. Law*, 325.

5th. Informal solemnization. *Savigny* thinks, that where an inhabitant of a State which requires religious ceremonies of a marriage, forms a civil marriage in a foreign country, according to its laws, this is not enough, on the ground that the laws of his domicile have a moral and religious basis, and have a coercive character. The marriage ought to be celebrated anew, according to the religious forms of the man's own domicile. *Woolsey*, *Intern. Law*, § 74.

But the settled rule in England and the United States is, that the solemnities are sufficient, if conformable to the law of the place of solemnization.

6th. Marriages contracted abroad, in evasion of the law of the domicile. *Huberus*, cited by *Story*, (*Conf. of Laws*, § 85,) says, that where persons belonging to one country, go into another to be married, merely to evade the laws of their own country, the marriage is void, although it be good by the law of the place where it is celebrated. *Parsons* inclines to favor this principle, although he admits the settled rule of England and the United States to be the contrary; and so it is stated by *Kent*, (2 *Commentaries*, 92.) The conflict might perhaps be reconciled, by making a distinction between evasion of the law of capacity and evasion of the law of solemnization. See *Story*, *Conflict of Laws*, § 86. If this exception were allowed at all, it ought not to prejudice the innocent party, where the intent of evasion existed in the mind of one party only. *Ponsford v. Johnson*, 2 *Blatchford's U. S. Circuit Ct. Rep.*, 51.

Besides these exceptions, there are others, vaguely stated by some writers, such as that the *lex loci contractus* should not prevail, to the prejudice of another, or where it works manifest injustice, or is *contra*

bonos mores, or is repugnant to the settled principles and policy of the *lex fori*.

The six exceptions above stated are all that we deem worthy of notice. Most of them should be disallowed. The simple rule, which, if adhered to, will solve many troublesome questions, and will tend toward harmonizing jurisprudence is, that, the efficacy of a transaction depends on the law of the place where it is had. It is proposed to apply this rule to the subject of marriage, with as few exceptions as possible; and the effect of the provisions here presented will be only to except polygamous and incestuous marriages, and these so far only as they would justify the maintenance of a personal relation within a jurisdiction which makes such relation a criminal offence.

¹ Where the validity of a marriage depends on the validity of a previous divorce, the rules of Part VI., on THE ADMINISTRATION OF JUSTICE, which forbid certain divorces, may result in an exception to the rule that the law of the place is the test of the validity of marriages.

Void marriages.

548. A marriage invalid according to the law of the place where it is contracted, is invalid everywhere; and the issue of such marriage is everywhere illegitimate.

Bishop states two exceptions to this rule. First, in the case of a victorious invading army, which carries with it the laws of its own country, for the protection of persons within its lines and general range of dominion. Second, if parties are sojourning in a foreign country, where the local law makes it impossible for them to contract a lawful marriage under it, they may marry in their own forms, and the marriage will be recognized at home as valid. *Bishop on Marriage and Divorce*, Vol I., §§ 391, 392. The first is included by the form of statement above, and the definition of the "law of place" in Article 310; and the second exception should not be allowed.

Capacity and consent.

549. The last two articles include the age requisite for marriage, and the necessity for the assent of parents, guardians, or public authorities, and the conditions for obtaining or seeking their assent or giving opportunity for their dissent; and to all other questions of capacity, except those dependent on the validity of a previous divorce.

The continental rule is understood to refer these questions to the law of the domicile of the party in question, or (as in the case of France) to the law of his or her nationality.

The English law applies its own tests to determine the validity of a marriage abroad, of English subjects not domiciled abroad. *Brook v. Brook*, 7 *Jurist*, (N. S.) 422; *Shaw v. Gould*, *Law Rep.*, 3 *House of Lords*,

55; *Fenton v. Livingston*, 5 *Jurist*. (N. S.,) 1183. But the Article above proposed is in harmony with the general rules in reference to status, proposed in this Code. And Article 552 avoids marriages which are contrary to positive law of the home of the parties when drawn in question there.

Burge, after discussing the cases at some length, states the result of the opinions of jurists and the decisions of judicial tribunals to be : That the validity of the marriage, both in respect of the competence of the parties to contract, and of the solemnities with which they contract, is to be decided with reference to the law of the place in which the marriage is contracted ; and if it be valid *secundum legem loci contractus*, it must be deemed valid in every other place, if it do not violate the law of nature, public morals, or the policy or institutions of that State in which its validity is sought to be established. *Burge on Foreign and Colonial Law*, vol. I., p. 199.

It was held in *Kinnaird v. Leslie*, (*Law Rep.*, 1 *Common Pleas*, 389,) that an attainder inflicted in one country ought not to affect the validity of a marriage subsequently contracted by the attainted person in a foreign country with an innocent woman who may not have known of the attainder.

Requisite forms.

550. Except in the cases provided for in the next article, those forms of celebrating marriage which are optional or obligatory for the members of a nation, are equally optional for foreigners, and equally obligatory for them unless dispensed with by the law of the place.

This is understood to be the generally established rule.

It might be deemed well to add such a saving clause as the following :

If, however, any religious ceremony shall be obligatory for citizens, any foreigner who shall depose before a magistrate that he cannot conscientiously submit to it, shall, after the completion of all other forms necessary, be admitted to marry any other foreigner or a member of the nation, by means of a written contract, signed by both parties, and deposited with such magistrate.

By the declaration of December 24th, 1867, between France and the Grand Duchy of Luxembourg, for the purpose of simplifying the legalization of papers produced by the subjects of either country on contracting marriage in the other, it was provided that such documents certified whether by the president of the tribunal or a judge *de paix* or his deputy, should be received by the civil officer of the other country, and no other legalization should be demanded, except in case of doubt respecting the authenticity of the document.

Public ministers and consuls may solemnize marriages.

551. Public ministers within the nations to which

they are accredited, and consuls within their respective districts, may solemnize marriages between parties either or both of whom are members of the nation of such officer, pursuant to such forms and under such restrictions as may be prescribed by that nation. Such marriages are valid, as if solemnized or contracted within the territorial jurisdiction of such nation according to its laws.

This Article is suggested by the British Consular Marriage Acts of 1849 and 1868, 12 and 13 *Vict.* 224, ch. 63; 31 and 32 *Vict.* 264, ch. 61; and the American act of June 22, 1860, § 29, 11 *U. S. Stat. at L.*, 55.

Burge lays down the rule, that: The parties are excused from conforming to the *lex loci contractus*, if they belong to a State, the subjects of which form a separate and distinct community in the foreign country in which they are married, as in the case of the British factories established in various parts of Europe and Asia; or if they belong to the State which has taken hostile possession and is in the occupation of the foreign country; or if they belong to the State whose ambassador is established in the foreign country. In these instances the parties may celebrate their marriage according to the law of their own country. *Burge on Foreign and Colonial Law*, I., p. 200.

Criminal offences.

552. A marriage, though valid according to the law of the place where it is contracted, will not be recognized as valid in any country in which the circumstances of such marriage would render the personal relation between the parties a crime.

Evasion of home law.

553. The act of persons contracting marriage in a nation in which they are not domiciled, in evasion of the law of the nation or domicil of either, may be made a criminal offence, but the validity of the marriage, if consummated, and the legitimacy of its issue, shall not be affected thereby.

There is not wanting sanction for the opinion that such a marriage is void. But *Westlake*, (*Private Intern. Law*, p. 323,) forcibly points out the embarrassment resulting from making the validity of a marriage depend on so uncertain an element as the opinion a court may form as to the motive of a journey.

Personal, marital and parental rights.

554. Except as otherwise provided by this Code,¹ the personal, marital and parental obligations and corre-

lative rights of the parties to a marriage at any time, are governed exclusively by the law of the place where they may be, unless polygamy there exists.

This depends on the principle that it is within the jurisdiction of any State to regulate the personal relations of all persons within its limits.

When married parties go from one jurisdiction to another, their marriage status assumes the peculiar hue, which the law of the place, where they temporarily or permanently are, gives to it. *Bishop on Marriage and Divorce*, § 407.

¹ See Chapter XXI., on DOMICIL, ORIGINAL AND SECONDARY.

Polygamy.

555. A polygamous union, though contracted in a polygamous nation, does not sanction the cohabitation or the divorce, of the parties, in any other nation ;¹ but the obligations and restrictions in other respects resulting from marriage, and the rights of property dependent thereon, may be recognized by any nation as applicable to the parties to such a union, in cases within its jurisdiction.²

¹ *Hyde v. Hyde*, 35 *Law Journal*, (N. S.) *Divorce Cases*, 57.

² It is submitted that, for the purpose of such *obligations*, toward the public, as arise out of the relation, a polygamous marriage should be recognized. For instance, it should preclude the polygamist from contracting a subsequent marriage, during the life of any existing consort ; it should not exonerate him from the obligations arising out of the relation of parent and child. It seems proper, too, that on the question of the succession to foreign assets, it should be considered as part of the law of the polygamous nation, whenever that law comes in to regulate the succession.

Legitimacy.

556. The legitimacy or illegitimacy of a person, as deduced from the law of the place where a marriage of the parents was contracted, is a personal attribute, and does not affect the succession to immovables situated in any other country, which would not recognize the person as legitimate, if the marriage had been contracted in such country at the time when it was actually contracted.

Story, (*Conf. of L.*, § 93 b, &c.) regards it as generally admitted by foreign jurists, that, as the validity of the marriage must depend upon the law of the country where it is celebrated, the status, or condition of their offspring as to legitimacy or illegitimacy, ought to depend on the same law, especially if the parents were domiciled there ; and there would be

some authority for extending this rule to control the succession to real property in foreign States.

According to *Savigny*, the laws of the place, where the birth of a child born out of wedlock actually takes place, exclusively determine whether he can be legitimated by subsequent marriage. *Savigny*, p. 257. *Schaeffner*. See also, *Story, Confl. of L.*, § 93, s. But a legitimation of a subject by the rescript of his sovereign, if effectual according to the laws of the country where the person legitimated has his domicile, has the same virtue everywhere. *Savigny*, p. 258.

CHAPTER XL.

GUARDIANSHIP AND MENTAL ALIENATION.

ARTICLE 557. Natural and testamentary guardians.

558. Judicially appointed guardians.

559. Sanity.

Natural and testamentary guardians.

557. The natural guardianship of a father or mother¹ over the person of a child, and testamentary guardianship,² acquired or conferred according to the law of one nation must be recognized in every other nation; subject to the power of the courts to interfere in the cases prescribed in Article 634.

¹ By the law of some States, the natural guardianship of the mother is recognized, upon the death of the father, and this Article accordingly provides for the mother's right.

² Testamentary guardianship is also included in this Article, because it stands in the place of natural guardianship. *Westlake*, (*Private Intern. Law*, p. 380,) however, is of opinion that testamentary guardianship depends on the same principle as judicial or statutory guardianship.

Judicially appointed guardians.

558. The guardianship or other custody of the person or property of one not having legal capacity, created by a foreign court of competent jurisdiction, in the cases provided in Article 633, must be recognized and respected by courts of any other country into which the ward comes, subject to the power of the courts to interfere in the cases prescribed in Article 634.

This provision is founded on the decisions in *Nugent v. Vetzera*, *Law Rep.*, 2 *Equity*, 704; and *Townsend v. Kendall*, 4 *Minnesota Rep.*, 412, extending it to other cases than that of infancy. In the first mentioned decision Vice-Chancellor WOOD says: "Having regard to the present international law and to the course which all courts have taken, recognizing the proceedings of the regularly constituted tribunals of all civilized communities, and especially of those in amicable connection with this country, it is impossible for me entirely to disregard the appointment of a guardian by an Austrian court over these children, who are Austrian subjects and children of an Austrian father, merely because those who preceded the defendant in his guardianship have taken the course of sending them over to this country for the purpose of educating them, seeing that he is now desirous of revoking that arrangement. It would be contrary to all principles of right and justice if the court were to hold that where a parent or guardian in a foreign country, avails himself of the opportunities for education afforded by this country and sends his children over here, he must do it at the risk of never being able to recall them, because this court might be of opinion that an English grade of education is better than that adopted in the country to which they belong."

And in this case an order appointing English guardians was declared to be without prejudice to the foreign appointment; and that the foreign guardian as such should have the exclusive right to the custody and control of the infants, with liberty to apply for the removal of the children from the country.

In the case of *Townsend v. Kendall*, above referred to, the court say: That it would lead to great inconvenience if it should be held that a guardian could not exercise his authority or be recognized out of the state, or locality of his appointment. It would embarrass the guardian in investing the funds of the ward in securities of other states, and render it necessary that he should be reappointed in every state or country through which he should pass with his ward in travelling. if an emergency should arise in which it became necessary to exert his authority. The court add, (referring to *Story, Conf. of L.*, §§ 495-507), "From a very careful examination of all he says, and the cases to which he refers, which have been attainable, we think the better rule is, upon principle and authority, to recognize the foreign appointment of a guardian, as creating that relation between the parties in this State, subject, of course, to the laws of this State, as to any exercise of power by virtue of such relation either as to the person or property of the ward. Provision has been made by the statutes of this State for the manner in which foreign guardians shall act when they desire to sell the real property of their ward situated within this State. (Comp. Statutes, p. 423, §§ 43, 44.) All that is necessary to obtain full recognition as guardian, is to file an authenticated copy of the foreign appointment in the Court of Probate of the country where the land is situated, and the foreign guardian is at once admitted to the same rights and powers over the real estate of his ward situated within the country, that are possessed by a guardian of our own appointment." Consult also, *Westlake, Private Intern. Law*, p. 380; and *Johnstone v. Beattie*, 10 *Clark & Finnelly's Rep.*, 114.

It was held in New York Surrogate Court, 1869, *Biolley's Estate*, 1 *Tucker's Rep.*, 422, that the usual treaty provision as to succession of foreigners (Treaty between the United States and Switzerland, 1850,) does not require a reciprocal recognition of foreign guardians.

The above Article is restricted to the case of guardians appointed judicially, so that the right of appointment by will, which in many of the States is recognized as existing in the parent, may be included in the previous Article respecting *natural and testamentary guardians*.

Surrogate BRADFORD, in stating the rule that foreign guardians have no extraterritorial authority, says: "The reason upon which a foreign guardian is denied any recognition of his title, is substantially this,—that all his authority springs out of his official character; and a civil officer, as such, can, of necessity, possess no power beyond the limits of the sovereignty by which he is appointed. Such exceptions as may exist have been admitted not *de jure*, but *ex comitate*. The *lex fori* primarily prevails in the form and order of the administration of justice, and foreign law is only received so far as it is found consonant with sound principle and public convenience—it is accepted on the basis of international comity, and not because of any inherent right. The continental jurists go further, and insist upon the absolute right and title of the guardian appointed at the place of domicil, wheresoever the ward is to be represented; but neither in England nor in the United States does this doctrine prevail." *McLoskey v. Reid*, 4 *Bradford's (New York) Surrogate Rep.*, 334.

⁴ *Woolsey*, (*International Law*, p. 122,) states that, the guardian empowered according to the law of the ward's domicil, which will usually be that of the deceased parent, exercises control over the ward's property wherever situated. But in the case of immovable property the *lex loci rei sitæ* may prevent such control of a foreigner, and it may be necessary to appoint a special guardian residing within the jurisdiction.

Sanity.

559. The laws determining the lunacy or idiocy of any person are territorial only; and a decision that a person is a lunatic or idiot will bind that person and his movables, whether he be a citizen or an alien, only while he is domiciled within the jurisdiction of the country in which such decision was made, and will bind the immovables of such person situated in that country, whether the domicil therein do or do not continue, but will not bind such person in any other country, nor the immovables of such person situated in any other country.

See, however, *Westlake*, *Private Intern. Law*, § 402, who says that "While the English law remains as it is, it must, on principle, be taken as excluding, in the case of transactions having their seat there, not only a foreign age of majority, but also all foreign determination of status or

capacity, whether made by law or by judicial act, since no difference can be established between the cases, nor does any exist on the Continent. Thus, an act facilitating the transfer of property vested in lunatics, can not be applied on the strength of a judgment, by a foreign competent court, declaring the person a lunatic; nor will the committee appointed by such court have any authority over the lunatic's person here."

TITLE XXV.

PROPERTY.

CHAPTER XLI. General provisions. *s*

XLII. Transfer.

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XLIV. Will.

CHAPTER XLI.

GENERAL PROVISIONS.

ARTICLE 560. Property defined.

561. What things are property.

562. Wild animals.

563. Real and personal property.

564. Real property.

565. Land.

566. Fixtures.

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568. Personal property.

569. Property in possession, or in action.

570. Law of immovables.

571. Law of movables.

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575. Rights of property of persons married without a settlement.

576. Matrimonial property after change of domicil.

577. "Matrimonial domicil" defined.

578. Abandonment.

Property defined.

560. The ownership of a thing is the right of one or more persons to possess and use it to the exclusion of

others. In this Code, the thing of which there may be ownership is called property.¹

This and the eight following Articles are from the *Civil Code, reported for New York*, § 159, &c.

¹ In another sense, property is the *right* of a person or persons, public or private, to appropriate a thing (tangible or intangible) to the exclusion of its promiscuous use by others. This has been also called *domain*. The word is here used, however, in its more general sense.

What things are property.

561. There may be ownership of all inanimate things which are capable of appropriation, or of manual delivery ; of all domestic animals ; of all obligations ; of such products of labor or skill, as the composition of an author, the good will of a business, trade-marks and signs ; and of rights created or granted by statute.

Wild animals.

562. Animals wild by nature are the subjects of ownership while living, only when on the land of the person claiming them, or when tamed, or taken and held in possession, or disabled and immediately pursued.

Real and personal property.

563. For the purposes of this Code, property is designated as either,

1. Real or immovable ; or,
2. Personal or movable.

Real property.

564. Real or immovable property consists of,

1. Land ;
2. That which is affixed to land ; and,
3. That which is incidental or appurtenant to land.

The existing rule of international law is, that the question whether an article of property is or is not an immovable, is to be determined by the law of the place where such article of property is locally situated. *Story, Confl. of L.*, § 447 ; *Felix, Droit Intern. Privé*, vol. I., p. 121. The above Article, and the four following, which are taken from the *Civil Code, reported for the State of New York*, are proposed here in order to secure a uniform rule for all cases arising under this Code.

Land.

565. Land is the solid material of the earth, whatever may be the ingredients of which it is composed, whether soil, rock, or other substance.

Fixtures.

566. A thing is deemed to be affixed to land when it is attached to it by roots, as in the case of trees, vines, or shrubs ; or imbedded in it, as in the case of walls ; or permanently resting upon it, as in the case of buildings ; or permanently attached to what is thus permanent, as by means of nails, bolts or screws.

Appurtenances.

567. A thing is deemed to be incidental¹ or appurtenant² to land, when it is by right used with the land for its benefit ;³ as in the case of a way, or water-course ; or of light, air or heat, from or across the land of another.

¹ *Smyles v. Hastings*, 22 *New York Rep.*, 217, 222.

² *Lampman v. Milks*, 21 *New York Rep.*, 505, 511.

³ *Ackroyd v. Smith*, 10 *Common Bench Rep.*, 164, 187.

Personal property.

568. Every kind of property that is not real, or immovable, is personal, or movable.

Property in possession, or in action.

569. Personal property is of two kinds :

1. Property in possession ; and,
2. Property in action.

Property in possession can only be such as is capable of manual delivery.

Law of immovables.

570. The law of the place where immovables are situate, exclusively regulates and determines the rights of parties, the modes of transfer, or of charging or otherwise disposing thereof, whether between living persons or by will, and the formalities to accompany them.

As to the extent to which this rule is adopted on the Continent of Europe, and among other States which have followed the French Code, see *Felix, Droit Intern. Privé*, vol. I. p. 119.

The form in which the rule is stated in *Curtis v. Hutton*, 14 *Vesey's Rep.*, 536 (approved in *Oakey v. Bennett*, 11 *Howard U. S. Supreme Ct. Rep.*, 33, 45, as a clear and precise statement of a doctrine uniformly recognized by the American courts), is as follows :

The validity of every disposition of real estate depends upon the law of the country in which that estate is situated.

It was held in the case of *Hutcheson v. Peshine* (16 *New Jersey Chan. Rep.*, 167), that the courts of a State will not recognize conveyances of real property within its jurisdiction, in trust for creditors, made within the jurisdiction and under the laws of another State. The rule was stated to rest not only on the acknowledged principle of law applicable to all assignments, voluntary or involuntary, that the title and disposition of real estate are exclusively subject to the laws of the country where it is situated, which alone can prescribe the mode by which title to it can pass: but upon the further reason, that the laws of one State will not be permitted to control the trust, the action of the trustee, and the disposition of the trust property in another, the subject of the trust being real estate. Citing *Lessee of McCullough's Heirs v. Roderick*, 2 *Hammond's (Ohio) Rep.*, 380; *Rogers v. Allen*, 3 *Id.*, 488; *Osborn v. Adams*, 18 *Pickering's (Massachusetts) Rep.*, 247.

A mortgage of immovables can only be made according to the law of the place of the property. *Hosford v. Nichols*, 1 *Paige's (New York) Rep.*, 220; and see *Goddard v. Sawyer*, 91 *Massachusetts (9 Allen) Rep.*, 78.

Law of movables.

571. Subject to the provisions of this Part,¹ movables are deemed to follow the person of their owner;² and the validity and effect of any transaction by him affecting the same, whether by acts between living persons, or by will, depend exclusively upon the law of the place where the transaction is had.³

¹ The rule that movables follow the person, says *Story (Conf. of L.*, § 550,) is a legal fiction, and yields whenever it is necessary for the purpose of justice, that the actual situs of the thing shall be examined. It does not authorize the exception to the general rule, that a nation within whose territory any personal property is actually situate has entire dominion over it while therein. Compare, to the same effect, *Green v. Van Buskirk*, 7 *Wallace's U. S. Supr. Ct. Rep.*, 139. See Articles 581, 582, and 583. The indorsements of negotiable paper will be, according to Chapter XLVI., another exception.

² *Félix, (Droit Intern. Privé*, vol. 1, p. 127), cites an almost universal concurrence of authority for the rule that the personal statute governs the movables; and he shows, in note 2, on page 133, that where there is a difference between the domicile and the nationality, the law of the domicile must apply. This interpretation of the rule is more clearly enforced by *Demangeat*, in notes, on page 127 a, 58 b, 53 a, and 132 a.

The rule is universally recognized in the United States. See *Civil Code reported for New York*, § 364. The doctrine is commonly stated substantially as follows:

Personal property has no situs, and a title acquired to it, if good by the law of the domicile, is good everywhere, and will be recognized and enforced in every State, unless it conflicts with its laws or the rights of its citizens. *Marcy v. Marcy*, 32 *Connecticut Rep.*, 308.

Story, in discussing the origin of this doctrine, says: "If the law *rei*

sita were generally to prevail in regard to movables, it would be utterly impossible for the owner, in many cases, to know in what manner to dispose of them during his life, or to distribute them at his death; not only from the uncertainty of their situation in the transit to and from different places, but from the impracticability of knowing with minute accuracy, the law of transfers *inter vivos*, or of testamentary dispositions and successions in the different countries in which they might happen to be. Any change of place at a future time might defeat the best considered will; and any sale or donation might be rendered inoperative, from the ignorance of the parties of the law of the actual *situs* at the time of their acts. These would be serious evils, pervading the whole community, and equally affecting the subjects and interests of all civilized nations. But in maritime nations, depending upon commerce for their revenue, their power, and their glory, the mischief would be incalculable. A sense of general utility, therefore, must have first suggested the doctrine; and as soon as it was promulgated, it could not fail to recommend itself to all nations by its simplicity, its convenience, and its enlarged policy." *Story, Confl. of L.*, § 379.

³ The place of *domicil* is usually the place of the transaction, but where there is a difference between the *domicil* and the place of the transaction, the tendency of recent opinion seems to be that the law of the place of the transaction should be held to apply in preference to that of the *domicil*.

"It does not follow," says *Story*, in explaining the rules, that movables are governed by the law of the *domicil*, "that a transfer made by the owner according to the law of the place of its actual *situs*, would not as completely divest his title; nor even that transfer by him in any foreign country, which would be good according to the law of that country, would not be equally effectual, although he might not have his *domicil* there. For purposes of this sort his personal property may, in many cases, be deemed subject to his disposal wherever he may happen to be at the time of the alienation. Thus, a merchant, domiciled in America, may doubtless transfer his personal property according to the law of his *domicil*, wherever the property may be. But, if he should direct a sale of it, or make a sale of it in a foreign country, where it is situate at the time, according to the laws thereof, either in person or by an agent, the validity of such a sale would scarcely be doubted. If a merchant is temporarily abroad, he is understood to possess a general authority to transfer such personal property as accompanies his person wherever he may be, so always that he does not violate the law of the country where the act is done. The general convenience and freedom of commerce require this enlargement of the rule; for otherwise the sale of personal property actually situate in a foreign county and made according to the forms prescribed by its laws, might be declared void in the country of the *domicil* of the owner. In the ordinary course of trade with foreign countries, no one thinks of transferring personal property according to the forms of his own *domicil*; but it is transferred according to the forms prescribed by the law of the place where the sale takes place." *Story, Confl. of L.*, § 384. See also *Westlake, Private Intern. Law*, §§ 266-267.

It may, therefore, be deemed a more correct statement of the rule, to refer, as in the Article above presented, to the law which governs the *person of the owner* wherever he may be, rather than that of the domicile, or that of his nation, from which he may be absent at the time of the transaction in question.

Westlake, (*Priv. Intern. Law*, § 267,) inclines to favor the rule referring to the *situs* of the property, admitting, however, the inconvenience in the case of property, the exact situation of which is unknown. It should seem that the more serious inconvenience of compelling parties to conform to laws which they have no present means of ascertaining, and which they will not, as in the case of ships and lands, generally suppose to apply, is decisive in favor of the rule which refers to the place of the act. The real grounds of the rule referring to the *situs*, namely, the protection of subsequent purchasers or creditors there, are provided for by the Articles of the next Chapter on TRANSFER.

If the rule of the *situs* should be recognized, it might perhaps be defined sufficiently to secure its real object, by provisions like the following :

1. Movable property of a foreigner imported into any nation, during its presence in that nation, is with reference to the assignability between living persons, or mode of charging such property, subject to the regulations of the country in which such foreigner has placed it, and which, in these respects, affects the personal property of the members of such nation ; and any such assignment *inter vivos*, or charge, will retain its original validity and effect, although the property be subsequently removed to another country. See *Olivier v. Townes*, 2 *Martin's (Louisiana) Rep.*, (N. S.,) 93 ; *Taylor v. Boardman*, 25 *Vermont Rep.*, 581 ; *Westlake*, *Priv. Intern. L.*, p. 257, § 272, note (d.) See also, generally, *Story, Conf. of L.*, ch. IX.

It was held in *Martin v. Hill*, (12 *Barbour's (New York) Rep.*, 631,) that a mortgage upon movables valid where it was made, was valid in another state to which the movables were subsequently carried and by the laws of which such a mortgage would be void as against attaching creditors. The protection of such charges will be fully secured by the Articles of this and the next Chapter.

2. If any lien, hypothecation, or other charge has attached to movables by the law of any country where the movables are situated, at the time it attached, so as to affect them in the hands of the owner, the same charge will attach to them in the hands of any transferee, although it has not attached to them according to the previous provisions of this chapter. See *Story, Conf. of L.*, §§ 386-389.

Local character of public funds and corporate shares.

572. Public funds or stocks, and shares or other interests in, or obligations of, nations or states, or of bodies politic or corporate, or other artificial bodies owing their existence to local laws, are governed in re-

spect to the validity and effect of transactions affecting the same, or property therein, by that law which gives them existence, subject, however, to such further restrictions as are imposed by the law of the place where the same are delivered or transferred.

Story, Conf. of L., § 383.

From the nature of the stock of a corporation, which is created by and under the authority of a State, it is necessarily, like every other attribute of the corporation, to be governed by the local law of that State, and not by the local law of any foreign State. *Black v. Zacharie*, 3 *Howard's U. S. Supr. Ct. Rep.*, 483 ; *Curtis v. Leavitt*, 15 *New York Rep.*, 9.

As to the national character of public funds, see *Commissioners of Charitable Donations v. Devereux*, 13 *Simon's Rep.*, 29, 30.

Local character of shipping.

573. Property in shipping is governed in respect to the title thereto, the modes of transfer, or of charging, or otherwise disposing of the same,¹ between living persons,² by the law of the nationality of the vessel, as defined by Chapter XX.

¹ In *Hooper v. Guman*, (2 *Law Rep.*, 2 *Chancery App.*, 282,) it was held that although legal title to a ship must be determined by the law of its nationality, a foreign contract of sale thereof, and the effect of the intervention of the title of a *bona fide* purchaser, for value, in a foreign country, must be governed by the law of the foreign country.

² In *Thomas v. Kosciusko*, 11 *New York Legal Observer*, 38, it is said that the transmission on the death of the owner is governed by the law of his domicil.

Story mentions as another exception, beside those mentioned in the last two Articles, the case of property in custody of the law under revenue acts ; but it may be doubted whether such custody should affect the question of title. It rather relates only to the lien maintained by the government, and a transfer according to foreign law subject to such lien might be valid.

Effect of matrimonial settlement.

574. The rights of property in movables, as affected by marriage, are governed by the express contract of the parties, subject to the provisions of Chapter XLVI., on CONTRACTS.¹ Until such contract is made,² or to the extent that the contract is inoperative,³ such rights are regulated by the next article.

¹ *Bishop, on Marriage and Divorce*, 1, § 404 ; *Story, Conf. of L.*, § 184.

² The exception is to be understood that the laws of the place where the rights are sought to be enforced, do not prohibit such arrangements. *Story, Conf. of Laws*, § 188.

³ *Story, Conf. of L.*, § 185 ; *Westlake, Private Intern. Law*, § 372.

Rights of property of persons married without a settlement.

575. The rights of property in movables, whether owned at the time of marriage or afterwards acquired, as affected by marriage, except in respect of succession, are governed by the law of the matrimonial domicile.¹ But upon a change of domicile, the right, as to all subsequent acquisitions, is determined by the law of the new domicile.²

¹ *Westlake, Private Intern Law*, § 366.

² *Story, Confl. of L.*, § 187.

Matrimonial property after change of domicile.

576. After a change by married persons, from the matrimonial domicile, the mutual rights of the husband and wife acquired subsequently thereto in each other's movable property, which arise from the marriage relation, and are dependent upon its continuance, are determined by the law applicable to their transactions, or by the law of their new domicile, according to the provisions of this Code, except as otherwise provided by some actual contract between the parties as to such rights.

This, so far as the law of domicile is concerned, is the American rule. *Story, Confl. of L.*, § 187, (§ 171, *b, et seq.*, *Redfield's ed.*;) and is supported by *Windscheid Pandekten*, I., § 35, p. 78, note. To the contrary, *Westlake, Priv. Intern. Law*, § 366, *et seq.* The supposition of a tacit consent, or submission, of the parties to the law of the matrimonial domicile, is certainly open to the objection that, even assuming the parties to have any intention on the subject, there is nothing to show that it was directed to the law of the matrimonial, rather than to that of the subsequent, domicile.

“Matrimonial domicile” defined.

577. The matrimonial domicile is the domicile first established by the husband and wife together; or, if none such be established, it is that of the husband at the time of the marriage.

See *Story, Confl. of L.*, § 193.

Abandonment.

578. The matrimonial domicile is not changed by an abandonment of one party by the other.

Bonati v. Welsh, 24 *New York Rep.*, 157.

CHAPTER XLII.

TRANSFER.

ARTICLE 579. "Transfer" defined.

580. Voluntary transfer.

581. Validity of transfers.

582. Jurisdiction over movables.

583. Protection of creditors.

"Transfer" defined.

579. The term "transfer," as used in this Code, means an act of the parties, or of the law, by which the title to property is conveyed from one living person to another.¹ It includes the creation and the extinguishment, by such act, of an interest in movables or immovables.

¹ *Civil Code, reported for New York, § 458.*

Voluntary transfer.

580. A voluntary transfer is a transfer by act of the parties, without compulsion of law, whether with or without consideration.

Validity of transfers.

581. Subject to the next two articles, and to the provisions of Chapter XLVI., on CONTRACTS, a transfer of movables, whether voluntary or involuntary, if valid by the law of the place where it is made, is valid everywhere.

Where personal property is seized and sold under an attachment, or other writ, issuing from a court of the State where the property is, the question of the liability of the property to be sold under such a writ, must be determined by the law of that State, notwithstanding the domicile of all the claimants to the property may be in another State. In a suit in any other State growing out of such seizure and sale, the effect of the proceedings by which it was sold, on the title to the property, must be determined by the law of the State where the proceedings were had. *Green v. Van Buskirk, 5 Wallace's U. S. Supreme Ct. Rep., 307.*

Jurisdiction over movables.

582. A transfer of movables, which is prohibited by

the law of the nation within whose exclusive jurisdiction they are situate, is void everywhere.

See Article 571. It may be thought better in lieu of the words "prohibited by", to insert "forbidden by an express provision of".

Protection of creditors.

583. A nation may give to any creditors who are subject to its jurisdiction, a lien on movables in possession or in action, situated within its exclusive jurisdiction, in preference to those claiming under a foreign transfer not made in conformity with its own law.

The three preceding Articles are intended to present a simple and uniform rule for determining the validity of foreign transfers of movables. The general rule that the personal statute governs movables, has been discussed under Article 571; and the rule there proposed is in harmony with the above Article 581, which makes the law of the place of the transaction the general rule. This is subject, however to any prohibition of the positive or customary law of the nation where the movables are situated. *Black v. Zacharie*, 3 *Howard U. S. Supreme Ct. Rep.*, 483; *Warren v. Copelin*, 45 *Massachusetts Rep.*, 594; *Story's Conf. of Laws*, §§ 383-4; *Farrington v. Allen*, 6 *Rhode Island (3 Ames) Rep.*, 449; *Parsons v. Lyman*, 30 *New York Rep.*, 103; *Caskie v. Webster*, 2 *Wallace Jr. U. S. Circ. Ct. Rep.*, 131.

A transfer made at the domicile of the maker, and efficient to transfer his property there, does not transfer his movables situated in another State by the law of which such transfer is regarded as inconsistent with public policy. *Varnum v. Camp*, 1 *Green (New Jersey) Rep.*, 326.

The rule that personal property shall be transferred according to the law of the domicile of the owner, and not the law of the *rei sitæ*, does not apply when the rights of residents in the State where the property is situate will be affected by it. *Moore v. Bonnell*, 2 *Vroom, (New Jersey) Rep.*, 90; *Bentley v. Whittemore*, 18 *New Jersey Chan. Rep.*, 366.

The exception for the protection of creditors stated in the above Article, turns, not on the validity of the transfer, but on the superior power of a State, acting through its courts, to apply property within its limits to the satisfaction of debts due to its citizens.

The customary law of a State where movables are situated, in reference to the formalities attending a transfer, will not be applied by the tribunals of such State against a transfer valid by the law of the place where the maker was domiciled and all the parties to the controversy are domiciled, if the defect of form does not prejudice the citizens of the State where the movables are situated. *Noble v. Smith*, 6 *Rhode Island (3 Ames) Rep.*, 446.

A transfer of movables situate in one State, made between persons domiciled in another State, which is valid by the law of the place of domicile, may be treated as valid against other persons domiciled in the same State, although it is defective in point of form according to the

law of the State in which the movables are situate. See *Rhode Island Central Bank v. Danforth*, 80 *Massachusetts (14 Gray) Rep.*, 123.

Where there is a conflict between the laws of different States, all that a debtor can reasonably be required to do is to make his assignment in good faith, and in accordance with the law of the State in which he lives and where the principal part of his property is situated. The courts of such State will give effect to the assignment on all the property within their jurisdiction, notwithstanding it may be inoperative as to real property in another State. *Trink v. Buss*, 45 *New Hampshire Rep.*, 325.

In *Pardo v. Bingham*, (*Law Rep.*, 6 *Equity Cas.*, 485,) it was held that the English courts should not give priority over all other creditors, to a claim against an Englishman, secured to a foreign creditor by an instrument, which, by being registered pursuant to the foreign law, was entitled by that law, to such priority.

In the case of *South Boston Iron Company v. Boston Locomotive Works & Trustee* (51 *Maine Rep.*, 585,) this principle was extended to protect the claim of a *foreign creditor*, who was a citizen of the State where the discharge was granted, but, *who, by the law of the State*, where the question arose and assets were attached, was entitled to proceed against such assets as well as if he were a citizen.

The enforcement of the lien, given by this Article, is provided for by Part VI., on the ADMINISTRATION OF JUSTICE.

CHAPTER XLIII.

SUCCESSION.

ARTICLE 584. "Succession" defined.

- 585. Law governing succession to movables.
- 586. Law governing succession to immovables.
- 587. Rights of succession, when not affected by foreign character of property.
- 588. Incidents of local burdens.
- 589. Failure of heritable blood.

"Succession" defined.

584. The term "succession," as used in this Code, means the coming in of another to take the property of one who dies without disposing of it by will.

The term "descent," hitherto chiefly used in the law of England and of the United States to denote the devolution of an inheritance, was derived from the ancient principle of the English law that an inheritance could never ascend and pass from son to father, but must descend or pass to descendants.

But as the American law allows property to pass in both ways, there

arises an incongruity which causes practical embarrassment, since the word "descendants" must still be confined to its strict meaning, and can not embrace all those who may take by the statute of descents, so called; and the word "descend" must often be used in a sense opposite to the devolution of property in the ascending line. The term "succession" is the more appropriate phrase of the civil law. This is, therefore, adopted to denote the transmission of property of a decedent by operation of law. *Civil Code reported for New York*, § 637.

Law governing succession to movables.

585. The succession to the movable property of one who dies intestate as to such property, is governed exclusively by the law of the place which was the domicile of the intestate at the time of his death.

Moultrie v. Hunt, 23 *New York Rep.*, 394; *Whicker v. Hume*, 7 *House of Lords*, 124; *Dogliani v. Crespini*, *House of Lords*, 1 *Eng. & Irish App. Cas.*, 301.

"This," says *Story*, in *Harvey v. Richards*, (1 *Mason's Rep.*, 381, 408,) "although once a much vexed question, is now so completely settled by series of well considered decisions that it cannot be brought into judicial doubt." (Citing numerous Continental, English and American authorities.) The reason of the rule is to avoid the uncertainty and confusion which would result from applying any other rule to the case of a person having property in several jurisdictions, or dying away from his domicile.

Chancellor *Kent* states the doctrine thus:

"There has been much discussion as to the rule of distribution of personal property, when the place of the domicile of the intestate and the place of the situation of the property were not the same. But it has become a settled principle of international jurisprudence, and one founded on a comprehensive and enlightened sense of public policy and convenience, that the disposition, succession to, and distribution of, personal property wherever situated, is governed by the law of the owner's or intestate's domicile, at the time of his death, and not by the conflicting laws of the various places where the goods happened to be situated. On the other hand, it is equally well settled, in the law of all civilized countries, that real property, as to its tenure, mode of enjoyment, transfer and descent is to be regulated by the *lex loci rei sitæ*." 2 *Kent's Commentaries*, 429.

"Whether personalty in one country becoming the property of a person who is in another country, and who there becomes insolvent, goes to the executor in the former country, or to the assignees in insolvency in the latter, depends upon the question in which country he had his domicile." *Re Blithman*, *Law Rep.*, 2 *Equity*, 23.

"The rule that movable property in one jurisdiction, of a person domiciled at the time of death in another jurisdiction, is distributed according to the law of the latter, is subject to the limitation that the question of what is and what is not his property may be determinable by another law;—*e. g.*, that of the matrimonial domicile." *Townes v. Durbin*, 3 *Metcalfe (Kentucky) Rep.*, 352.

Law governing succession to immovables.

586. The succession to the immovable property of one who dies intestate as to such property, is determined exclusively by the law of the place in which the immovables are locally situate.

See note to previous Article. Convention between France and Austria, December 11, 1866, 9 *De Clercq*, 675.

M. Helbrouner, in commenting on a preliminary draft of this Chapter (*Bullet. de la Soc. de Legis. Comp.*, No. 2, Avril, 1869, p. 26), objected that in the matter of Wills, &c., the chapter seemed only to refer to the conflicts possible between English and American laws, by the distinction of inheritances into real and personal estate, which is unknown in the legislation of the Continent.

Since, in some countries these distinctions exist, an International Code which does not propose to interfere with them, should provide for their being observed in the administration of questions to which they may properly apply.

The rule that a distinction is to be made between movables and immovables, the law of the domicile applying to the succession to the former, and the law of the place where the property is situated applying to the latter, seems to be supported by the greater concurrence of authorities.

Felix, however, cites many distinguished authors as having favored a different rule, which may be stated as follows :

The succession to all the property whether movable or immovable of a person, who dies intestate as to such property, is governed by the law of the place which was the domicile of the decedent at the time of his death, unless there be some prohibitory law in the place where immovable property is situated, and except such immovable property as by the law of its place has a special quality impressed upon it determining its devolution. *Felix, Droit International Privé*, vol. 1, pp. 140-147.

Rights of succession, when not affected by foreign character of property.

587. When an intestate dies leaving foreign immovables, the right of succession to the movables of the intestate will not be controlled or affected by any conditions which would attach to the right, if the immovables had been situated in the country of the domicile of the intestate ; nor will the right of succession to the immovables be controlled or affected by any conditions which would attach to that right, if the movables had been situated in the same country with the immovables.

Balfour *v.* Scott, 6 *Brown's Parly Rep.*, (by Tomlin,) 731, cited in *Story, Confl. of L.*, § 486.

Incidents of local burdens.

588. Any local burden which would primarily fall upon the immovables of an intestate, according to the law of the place where such immovables are situated, will retain such order of incidence, although, according to the law of the domicile of the intestate, such burden would fall primarily upon his movables.

Drummond v. Drummond, 6 *Brown's Party Rep.*, 550, (by *Tomlin*), cited in *Story, Conf. of L.*, § 487.

Failure of heritable blood.

589. The property, whether movable or immovable, of a foreigner who dies intestate in respect thereto, and leaves no person capable of succeeding according to the rules indicated in articles 585 and 586, accrues to the nation or state within whose jurisdiction such property is locally situate, subject to the payment of debts, and, after that, to such rule of distribution as may be adopted by that nation or state.

This Article is suggested by the case of the *Public Administrator v. Hughes*, 1 *Bradford's Surrogate (New York) Rep.*, 125, 130.

CHAPTER XLIV.

WILL.

ARTICLE 590. "Will" defined.

591. Will of movables.

592. Testamentary capacity as to movables.

593. Qualification of preceding Articles.

594. Testamentary capacity as to immovables.

595. Probate, when necessary.

596. Construction or interpretation of will.

"Will" defined.

590. The term "will," as used in this Code, includes all testamentary acts.

Will of movables.

591. A will of movables is valid everywhere in respect to form and execution, if it be valid in respect

thereto by the law of the place where it was executed, or by the law of the place which was the testator's domicile either at the time of its execution or at the time of his death.

This rule is new, though not without sanction. It is founded upon the unreasonableness of requiring persons sojourning abroad to have their wills drawn in conformity to the law of their domicile, of which the means of information may not be at hand; the hardship of affixing to a change of domicile the legal consequence of the revocation of a will made in the former domicile, and the inconvenience of requiring a new execution upon a change of domicile.

It is not the rule applied by the American courts generally, but is more in harmony with the spirit of the civil law. *Irwin's Appeal*, 33 *Connecticut Rep.*, 128.

It seems to be a sufficient safeguard of the solemnities necessary to a valid testament, that the testator should respect and fulfill the requirements of either of the systems of local law which may reasonably be supposed by him to be applicable to his case. This rule is, however, restricted to wills of movables.

Such a relaxation of the existing rule was suggested as a reasonable and proper one, by the Chancellor of New York, in the matter of *Roberts*, 8 *Paige (New York Rep.)*, 519, and is sustained by *Schultz v. Dambmann*, 3 *Bradford's Surrogate, (New York Rep.)*, 379.

In 1856 a statute was passed in the State of Connecticut, enacting that a will whether of real or personal estate, executed according to the formalities required by the law of the country within which it is executed, shall be valid to pass such property wherever situate. This rule is understood to have been approved by experience, and has been in force there ever since. The same has been, we believe, adopted in some other of the United States.

The general rule of English and American courts, as laid down in *Moultrie v. Hunt*, 23 *New York Rep.*, 394, may be stated as follows:

The validity of a will of movables, in respect of form, is determined solely by the law of the place which was the testator's domicile at the time of his death.

Story states this rule as settled; and adds, that, if void by that law, the will is void everywhere, although it fulfills the requisites of the law of the place where assets are situated. *Story, Conf. of L.*, § 467.

There is much to be said, however, against this rule; and perhaps the doctrine, better supported by the existing authorities, is that, a will valid in form is not revoked, nor is its interpretation altered by a subsequent change of domicile of the party, unless expressly stated to be revocable thereby. *Fœlix, Droit Intern. Privé*, nos. 117, 77.

"It can never be imagined that by his transference of his domicile to England, the testator intended tacitly to revoke his will, more especially since by the continental law, with which alone from his previous life he can be supposed to be acquainted, such transference would not have that effect." *Westlake, Private Intern. Law*, p. 326.

The act of 24 and 25 *Vict.*, c. 114, §§ 2, 3, adopts the principle, that, a will executed by a British subject according to the law of that part of the United Kingdom where it was made, is valid without reference to the domicile of the testator at the time of making, or of death; and that the validity or construction of a will is not affected by any subsequent change of domicile. Whether a marriage in a new domicile can affect it, may be doubtful. *Matter of Reid*, *Law Rep.*, 1 *Probate & Divorce*, 74.

Testamentary capacity as to movables.

592. The law of the place which was the testator's domicile at the time of his death, determines both his capacity to make a will of movables, and his disposable power over the movables.

Schultz v. Dambmann, 3 *Bradford's Surrogate* (*New York Rep.*, 379; *Exp. McCormick*, 2 *Id.*, 169; *Story, Conf. of L.*, § 465.

Qualification of preceding Articles.

593. The provisions of articles 591 and 592 are subject to the right of every nation to regulate the object of testamentary gifts of movables, as well as immovables, within its territory, by positive laws.

Story, Conf. of L., § 472. The creation of trusts, and other matters relating to the substance of the disposition, are to be governed of course by the local law.

Testamentary capacity as to immovables.

594. The law of the place where immovable property is situated determines the capacity of the testator to make a will of such immovables, the extent of his power to dispose of the property, the form and execution of the will, and the solemnities necessary to give it effect.

Story, Conf. of L., § 474. This is stated to be the common law rule, and one supported by great weight of authority of foreign jurists, although they are not entirely agreed upon it.

According to the case of *White v. Howard*, 52 *Barbour's* (*New York Rep.*, 294, this rule includes the application of such local laws as limit bequests and devises for certain uses to a portion of the testator's estate.

Probate, when necessary.

595. A will proved in one nation or state, is not sufficient to pass immovables situate in another, unless admitted to probate in the latter state, according to its laws.

Crusoe v. Butler, 36 *Mississippi*, (7 *George*,) *Rep.*, 150, citing *McCormick*

v. Sullivan, 10 *Wheaton's U. S. Supr. Ct. Rep.*, 202; *United States v. Crosby*, 7 *Cranch U. S. Supr. Ct. Rep.*, 115; *Kerr v. Moon*, 9 *Wheaton's U. S. Supr. Ct. Rep.*, 565; *Carmichael v. Elmendorf*, 4 *Bibb (Kentucky) Rep.*, 484; *Cornelison v. Browning*, 10 *B. Munroe (Kentucky) Rep.*, 428.

But letters are not necessary in the latter state, unless the execution of the power conferred by the will depends upon them. As to real property not assets, the probate is only authenticated evidence, and not the foundation of the executor's title. *Crusoe v. Butler*, 36 *Mississippi*, (7 *George*.) *Rep.*, 150.

Construction or interpretation of will.

596. The interpretation of a will, whether of movables or immovables, depends upon the law of the place where it was made, unless a different intent appears on the face of the instrument, either from its being made in a foreign language, or from other circumstances.

The rule, as generally laid down, refers to the law of the domicile of the testator for the interpretation of his will. *Parsons v. Lyman*, 4 *Bradford's Surrogate (New York) Rep.*, 268; *Anstruther v. Chalmer*, 2 *Simon's Rep.*, 1; *Yates v. Thomson*, 3 *Clark & Finnelly's Rep.*, 544; *Isham v. Gibbons*, 1 *Bradford's Surrogate (New York) Rep.*, 69; *Demangeat* in notes to *Fœlix, Droit Intern. Privé*, vol. 1, p. 130, note b.

On this point the following rules may be extracted from the principles discussed and laid down by *Story*:

A will of movables must be interpreted according to the law of the testator's domicile at the time of the actual making of the will. *Story, Confl. of L.*, § 474, *a, f.*

The question whether or not a testator intended to devise real estate or immovables by his will, or as to what is included in the words "real estate," "immovables," or the like, must be determined by the same law. *Ib.*, § 479, *a.*

So, also, of the interpretation to be put upon the words of description of a person or a class of persons mentioned by a testator. *Ib.*, § 479 *e.*

But it seems a more reasonable rule, and one in harmony with the principles embodied in the preceding Articles, to make the interpretation of the language dependent upon the law of the place where such language was used, rather than on that of the testator's domicile, which may be another place.

TITLE XXVI.

OBLIGATIONS.

- CHAPTER XLV. Obligations in general.
XLVI. Contracts.
XLVII. Obligations imposed by law.
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CHAPTER XLV.

OBLIGATIONS IN GENERAL.

- ARTICLE 597. "Obligation" defined.
598. Obligation, how created.
599. When an obligation accrues.
600. Certain contracts excepted.

"Obligation" defined.

597. The term "obligation," as used in this Code, means a legal duty by which a person is bound to do or not to do a certain thing.

Civil Code, reported for New York, § 670.

Obligation, how created.

598. An obligation arises either from,

1. The contract of the parties; or,
2. The operation of law.

Civil Code, reported for New York, § 671.

When an obligation accrues.

599. The time when an obligation accrues is determined by the law of the place where it arises.

Gassaway v. Hopkins, 1 Head (Tennessee) Rep., 583.

Certain contracts excepted.

600. The provisions of this Title have no application to marriage, nor to contracts relating to immovables,¹ in so far as they relate thereto.

It has, however, been held that a contract made and to be performed in S., for the discharge of a debt secured by a mortgage on an immovable in D., is governed as to its interpretation, and the appropriation of payments made under it, by the law of the place of the contract. "The mere fact of the money having been advanced on a mortgage in a foreign country, does not render it requisite that the contract should be governed by the law of that country in which the mortgaged land is situate." *Campbell v. Dent*, 2 *Moore's Privy Council Rep.*, 292, 307, 308; *Westlake Private Intern. Law*, § 229.

CHAPTER XLVI.

CONTRACTS.

SECTION I. Law of place.

II. Place of making contract.

III. Formalities.

SECTION I.

LAW OF PLACE.

ARTICLE 601. Contracts made and performed in same nation.

602. Contracts made and performed in different nations.

603. Law governing interpretation of contract.

604, 605. Illegality of contract.

606. Mode of charging parties to negotiable instruments.

Contracts made and performed in same nation.

601. A contract made and agreed expressly or tacitly,¹ to be wholly performed within the jurisdiction of the same nation, is governed by the law of that nation.

¹ *Story, Conf. of L.*, § 280. This rule of municipal law requires to be mentioned as a rule of international law, not only because the contracting parties may be foreigners, but because the effect of such a contract even when made between members of the nation is frequently drawn in question abroad, in respect to the rights of foreigners. *Benness v. Clemens*, 8 *Pennsylvania State Rep.*, 24.

Contracts made and performed in different nations.

602. Subject to articles 604 and 605, a contract made within the jurisdiction of one nation, and agreed expressly or tacitly to be performed either wholly or in part within the jurisdiction of another, is governed as to its validity¹ by the law of the place where it is made;² and as to its interpretation by the law actually or presumptively intended by the parties for that purpose; as provided in the next article.

¹ The expression "existence" of a contract has been sometimes recommended in preference to the terms "validity" or "legality," for the reason that an invalid or unlawful contract is "no contract at all." (*Coppocks v. Brower*, 4 *Meeson & Welsby's Rep.*, 368.) "It must be a legal contract or it is nothing." *Washburn v. Franklin*, 28 *Barbour (New York) Rep.*, 28. So a fraudulent transaction as between the parties "in contemplation of law . . . never had any existence at all." *Bottomley v. United States*, 1 *Story U. S. Circ. Ct. Rep.*, 147. This reasoning, however, does not appear to be entirely satisfactory; for in ordinary language an agreement between parties is a contract in conscience, though not a contract in law.

² Many cases might be cited as holding in general terms that the validity or existence of a contract depends on the law of the place of performance. But no case has been found holding, for instance, that the contract of two infants of the age of 15 years, made in New York, to be wholly performed in a country where at that age they would be considered adults, is a valid contract.

The main exception to this principle is found in the cases on usury, which lay down the rule that the law of the place of performance is to govern; so that, if payment is to be made in another country, the rate prescribed by the law of either country may be stipulated for, even when the law of the place of making the contract prescribes a lower rate than that allowed in the place of payment. *Andrews v. Pond*, 13 *Peters' (U. S. Supreme Ct.) Rep.*, 65; *Pecks v. Mayo*, 14 *Vermont Rep.*, 38; *Cope v. Allen*, 53 *Barbour (New York) Rep.*, 350; 2 *Kent's Commentaries*, 461; 2 *Parsons on Contracts*, 585, note n; *Story, Conf. of L.*, § 296; *Savigny and Fœlix*, as cited by *Westlake, Private Intern. Law*, § 205.

When the rate allowed by the place of making the contract is higher than at the place of performance this question does not arise. Such a contract at the rate allowed by either law is, of course, valid. *Depau v. Humphreys*, 8 *Martin, Louisiana, (N. S.)* 1; 2 *Kent's Commentaries*, 461, note b; *Balme v. Wombough*, 38 *Barbour (New York) Rep.*, 352; *Richards v. Glove Bank*, 12 *Wisconsin Rep.*, 692; *Vliet v. Camp*, 13 *Id.*, 198; *Fisher v. Otis*, 3 *Chandler, (Wisconsin) Rep.*, 83.

The point decided in the case of *The Commonwealth of Kentucky v. Bassford*, 6 *Hill (New York) Rep.*, 438, was that a contract made and to be performed beyond the State of New York in relation to a foreign lottery, if lawful where made, will be enforced in New York, though if

made in New York it would be unlawful. *Thatcher v. Morris*, 11 *New York Rep.*, 438.

The dictum of Lord MANSFIELD, in *Robinson v. Bland*, 2 *Burrows Rep.*, 1077, evidently has reference to the cases provided for in Article 604.

So the validity of a voluntary assignment of movables in trust is governed by the law of the place of its origin. *Speed v. May*, 5 *Harris (Pennsylvania) Rep.*, 91; *Law v. Mills*, 6 *Id.*, 185; but some exceptions have been made, 6 *American Law Reg.*, (N. S.), 522.

It is not enough that the parties have in view a reference to the law of another State in the formation of their contract; for, if that were sufficient the statute of usury would in every case at the option of the parties become a dead letter. The rule is that the parties must have a view to the laws of another State in the execution of the contract, and then undoubtedly the contract is to be governed by such foreign law. *Kent, J. Van Schaick v. Edwards*, 2 *Johnson's Cases*, (New York,) 367.

This familiar and fundamental rule is stated by most authorities as a consequence of the independent sovereignty of States, but it has been well expounded in a recent case with reference to the principle which is also essential to it; that, men ought to be safe from civil loss and criminal liability if they conform to the laws of the place where their acts are done. An act to be punishable as an offense must be a crime where it is performed. A person who is about to enter into a contract ought to have an opportunity to take legal advice. This privilege he would be in a great measure deprived of unless he can apply to members of the legal profession in the place where the contract is to be made, and they would naturally instruct him in that law with which they are familiar. *Koster v. Meritt*, 32 *Connecticut Rep.*, 246.

Law governing interpretation of contract.

603. The law intended by the parties to govern the interpretation of any¹ stipulation of their contract is deemed to be:

1. The law of any nation named by them for that purpose, as a part of their contract; or,²

2. If no such law is so named, the law of the place where such stipulation is agreed to be wholly³ performed; or,⁴

3. If no such law or place of performance is specified, the law of the place of making their contract;⁵ but in this case a contrary intention may be shown.⁶

¹ Where there are several stipulations to be performed in several places, the law of the place of performance of one does not govern as to another. *Pomeroy v. Ainsworth*, 22 *Barbour (New York) Rep.*, 128.

It seems that English subjects on their marriage may stipulate that their marriage rights shall be regulated by the law of a foreign country; and the courts of England will enforce such a contract. *Este v. Smith*, 23 *Law Journ. Chanc.*, 705.

"It has been held in Louisiana that a matrimonial contract which would adopt a law foreign to the domicile must set out its provisions, and not merely refer to the law *eo nomine*. *Bourcier v. Lanusse*, 3 *Martin (Louisiana) Rep.*, 581. But a contrary opinion has been expressed in *Este v. Smith*, 18 *Beavan's Rep.*, 122." (*Westlake, Private Intern. Law*, § 371; citing also, *Byam v. Byam*, 19 *Beavan's Rep.*, 58.)

In *Millar v. Heinrick*, 4 *Campbell Rep.*, 155, a Russian contract for seaman's wages payable monthly "subject to the deductions provided for by the regulations of the Russian marine" was held to be governed in that respect by the law so named.

² *Cook v. Moffat*, 5 *Howard U. S. Supr. Ct. Rep.*, 312; *Van Schaick v. Edwards*, 2 *Johnson's Cases*, (*New York*), 367. KENT, J.

"Cases may be readily conceived where it might be difficult to determine whether the parties had reference to the laws of the place where the contract was made or some other place. . . . In such cases it is desirable that the parties should be at liberty to determine by express stipulations made in good faith by which law the rate of interest shall be governed." *Townsend v. Riley*, 46 *New Hampshire Rep.*, 312.

"The law of the place," [*i. e.* of making,] "can never be the rule where the transaction is entered into with an express view to the law of another country as the rule by which it is to be governed. *Huber's Prælectiones*, 1, 3, p. 34, is clear and distinct, *Voet* speaks to the same effect."

"That it was competent for the parties, being citizens of Illinois, to provide by their express agreement that it should be . . . construed by the laws of the State is too well established by authority to admit of doubt." (2 *Burrows Rep.*, 1077.) *Strawbridge v. Robinson*, 5 *Gilman (Illinois) Rep.*, 470. *Parsons on Notes & Bills*, I, p. 57.

It is the constant practice in America to name the law by which all questions of interpretation of a contract shall be determined.

³ See, *Westlake, Private Intern. Law*, nos. 212, 216.

A policy of marine insurance made in England, although on a foreign voyage, *i. e.*, from England abroad,—is to be interpreted as to all matters contemplated in it, as an English contract. *Dent v. Smith*, *Law Rep.*, 4 *Queen's Bench*, 414; and see *Peninsular & Oriental Co. v. Shaw*, 3 *Moore's Privy Council Rep.*, (*N. S.*) 272; *Hale v. N. J. Steam Navigation Co.*, 15 *Connecticut Rep.*, 546-7.

See *Story, Conf. of L.*, § 280, to the contrary.

⁴ *Story*, § 280; *Penobscot, &c. R. v. Bartlett*, 78 *Massachusetts* (12 *Gray*) *Rep.*, 248; *Cox v. United States*, 6 *Peter's U. S. Supreme Ct. Rep.*, 172; *Bank of United States v. Daniel*, 12 *Id.*, 32; *Bell v. Bruen*, 1 *Howard U. S. Supr. Ct. Rep.*, 169; *Kanaga v. Taylor*, 7 *Ohio State Rep.*, (*N. S.*) 142; *Pryor v. Wright*, 14 *Arkansas Rep.*, 189; *Gaylord v. Johnson*, 5 *McLean U. S. Circ. Ct. Rep.*, 448; (as to grace,) *Bowen v. Newell*, 13 *New York Rep.*, 290; (as to usury,) *M'Allister v. Smith*, 17 *Illinois Rep.*, 328; (as to interest,) *Hawley v. Sloo*, 12 *Louisiana Ann. Rep.*, 815; (as to amount of interest,) *Vincent v. Platt*, 21 *Georgia Rep.*, 135; 2 *Parsons on Notes & Bills*, 320; *Mason v. Dousay*, 35 *Illinois Rep.*, 424.

⁵ The rule of comity adopts the law of the country where the contract,

is made, in determining its nature, construction and validity, unless such construction is *contra bonos mores*, or against some positive law of the place where the contract is sought to be enforced.

Lloyd v. Ginbert, *Law Rep.*, 1 *Queen's Bench*, 115. *Forsyth's Cases & Opinions in Constitutional Law*, p. 239.

It can have no validity except conformable to the law where made. The Baltimore & Ohio R. R. Co. v. Glenn, 28 *Maryland Rep.*, 287.

No right can be derived under any contract, made in opposition to the law where it is made. Hall v. Mullin, 5 *Harris & Johnson (Maryland) Rep.*, 193.

But where a question arises under the common law, or law merchant, the courts of one State will not be concluded as to what the common law rule in such case is, by what the courts of the State where the contract was made have decided in relation thereto. Otherwise if the decision was upon a question arising under some custom or usage of the place where the contract was made.

Franklin v. Twogood, 25 *Iowa Rep.*, 520.

⁶ Perhaps other modes of indicating the intent should be allowed to provide for cases like the following: (1.) A contract made between foreigners in their foreign language; *Felix, Droit Intern. Privé*, vol. 1, 158, *d*; (2.) A contract, subsidiary or incidental to a foreign right or obligation; as, a contract made by a manufacturer in one country, to supply goods in another to enable the other party to fulfill a contract to be performed in a third country; or, a contract in one country to give a release in another from a foreign obligation, which would mean a release good by the foreign law; or, a contract in *A.* to make another contract in *B.* for doing an act in *C.*: (3.) A contract where the subject relates locally to a foreign country. Robinson v. Bland, 2 *Burrows' Rep.*, 1078, 1079.

Illegality of contract.

604. A contract, wherever made or to be performed, which is forbidden by an express¹ provision of the law of any nation within whose jurisdiction it is agreed to be wholly or in part performed,² is unlawful everywhere,³ so far as relates to the prohibited performance.

¹ "What is injurious to the rights of the citizens where the property is situated should be the subject of positive legislation, and not left to the discretion of the courts: (*Story, Conf. of L.*, § 390;) and so are the authorities generally in the United States, although the rule is somewhat more broadly expressed. Zipsey v. Thompson, 1 *Gray (Massachusetts) Rep.*, 243; Vernam v. Camp, 1 *Green (New Jersey) Rep.*, 326; 2 *Mason, U. S. Circ. Ct. Rep.*, 157; 5 *Greenleaf*, 245; Olivier v. Townes, 2 *Martin (Louisiana) Rep.*, 97. Guillander v. Howell, 35 *New York*, 657.

An express provision of law that a voluntary assignment in trust made abroad, of a debt, due by a resident, shall not be effectual, in the debtor's residence unless recorded there, as against *bona fide* subsequent purchasers, will render the assignment invalid to that extent. Philson v. Barnes, 50 *Pennsylvania State Rep.*, 230.

² *Story, Conf. of L.*, § 244, 32; *Varnum v. Camp*, 1 *Green (New Jersey) Rep.*, 326.

³ 1 *Félix, Droit Intern. Privé*, p. 236. (Citing *Pothier des Assurances*, No. 58,) and note (a.) by *Demangeat*. Other authorities make the contract unlawful only in the courts of the nation whose law is violated.

The same.

605. A contract, wherever made or to be performed, which is made with the intent to violate an express provision of this Code, or of the law of any nation a party to this Code is unlawful everywhere.

Westlake on Private International Law, §§ 196, 200; *Bancher v. Mansel*, 47 *Maine (3 Hubbard) Rep.*, 58.

Mode of charging parties to negotiable instrument.

606. The holder of a negotiable instrument, at its maturity, may charge any other party thereto by performing the act required by the law either of the place where it is payable, or of the place where the party, sought to be so charged, contracted; and every party other than such holder may charge any of his predecessors by acting according to the law of the place where his own contract was made, or where the instrument is made payable.

The rule stated in the text was applied in *Hirschfeld v. Smith*, 35 *Law Journ. (N. S.) C. P.*, 177; *Law Rep.*, 1 *C. P.*, 340, in the case of an indorser, as well on previous authority, as on the ground that notice required by the law of the place of payment must be deemed reasonable. "The inconvenience would be great if the holder was bound to know the place of each indorsement and the law of that place relating to notice of dishonor, and to give notice accordingly." *Parsons (2 Notes & Bills*, 341, note,) confirms this view, and further says: that, as the indorser must have intended that the protest should be made by a notary of the place of dishonor, it must have been also understood that the notary should act according to his own law. Besides this, a notary, though knowing the place where an indorsement was made, might not be able to ascertain the requirements of the law of that place.

The weight of American authority, however, is in favor of the place of perfecting the indorsement.

In *New York*, in *Aymar v. Sheldon*, 12 *Wendell (New York) Rep.*, 439, an indorser there of a West India bill, drawn on France, was held liable on its non-acceptance, although the French law would not make him liable until non-payment. So, as to the necessity of giving any notice of protest, see *Artisans' Bank v. Park Bank*, 41 *Barbour (New York) Rep.*, 599; or of exhausting the remedies against the maker, *Lee v. Sellick*, 33 *New York Rep.*, 615; see also *Short v. Trabue*, 4 *Metcalf (Kentucky) Rep.*, 299; *Rose v. Park Bank*, 20 *Indiana Rep.*, 94; *Raymond v. Holmes*, 11 *Texas Rep.*, 54.

By the present rule, where a bill is drawn in one State and indorsed in another, and accepted and dishonored in a third, the rights of the holder can only be secured by a compliance with the laws of the three, and so as to every other foreign and independent State. *Thorp v. Craig*, 10 *Iowa* (2 *Withrow*) *Rep.*, 461.

SECTION II.

PLACE OF MAKING CONTRACT.

ARTICLE 607. "Place of making contract" defined.

608. Contract made by several parties in different places.

609. Special agreement as to place of consummating contract.

610. Presumed place of making contract.

611. Implied contracts.

612. Presumption as to place of indorsement of negotiable paper.

613. Estoppel.

"Place of making contract" defined.

607. The "place of making" an express contract, within the meaning of this Code, is the place where the intention of the party, to whom the offer to contract is made, is first completely¹ manifested, as follows:

1. If manifested by sending a written or oral statement of such acceptance to the party making the offer, at the place from which the statement is sent ;²

2. If manifested without a statement of acceptance, either by performing the essential terms of the offer, or by receiving the consideration offered, at the place where such performance or receipt occurs ;³

3. If manifested through an agent authorized by the party to whom or in whose favor the offer is made to bind him by declaring the intention of such agent⁴ to accept it, at the place where the agent makes such declaration.⁵

¹ Where a preliminary chaffering in North Carolina was followed by delivery of the money lent, and receipt of the note therefor, both occur

ring in Georgia, the contract of loan and note were held to be made in Georgia. *Davis v. Colman*, 11 *Iredell (North Carolina) Rep.*, 303. *Cases and Opinions in Constitutional Law*, by *Forsyth*, p. 244.

The place of delivering an indorsement written elsewhere is the place of making it. *Young v. Harris*, 14 *B. Monroe (Kentucky) Rep.*, 559; *Pine v. Smith*, 11 *Gray (Massachusetts) Rep.*, 38.

² In *Parken v. Royal Exchange Ass. Co.*, 8 *Session Cases*, 2nd Series, 372, a life insurance policy was applied for by a domiciled Scotchman on the life of another Scotchman. The application was made by him in Scotland to the defendant's agent there. The defendant sent the desired policy from its head-office in London completely executed to its Scotch agent for delivery in Scotland to the applicant, which was done, the agent not doing or being authorized to do anything else to bind the company. The court held that the acceptance of the offer to contract was made in England; that the delivery of the policy in Scotland was not a new offer made there, but the completion of the notification of an acceptance made in England; and that the implied authority of its agent in Scotland to withhold delivery there, if anything material had come to his knowledge, (p. 371,) did not change the place of making the contract from England to Scotland. A similar state of facts arose in *Wright v. Insurance Companies*, 6 *Am. Law Register*, 489, and was decided in the same way.

³ If goods are sent by the seller in one State to the purchaser in another, in pursuance of an order, the purchaser's contract to pay is deemed made where accepted by dispatching the goods. *Woodbridge v. Allen*, 53 *Massachusetts Rep.*, 470; *Kline v. Baker*, 99 *Id.*, 255.

So, goods sent by a principal from a place where his agent to procure orders only has sent him such an order, is made at the place whence the merchandise, not the order was sent. *Woolsey v. Bailey*, 7 *Foster (New Hampshire) Rep.*, 217; *Smith v. Smith*, 7 *Id.*, 244.

⁴ The distinction between a messenger and an agent in the strict sense, is that while each of them communicates a declaration of intention meaning to bind not himself but his principal, yet it is only the agent who declares what his own will is. The messenger declares what his sender's will is. *Windscheid Pandekten*, I., § 73.

⁵ *Westlake, Private Intern. Law*, §§ 212, 221; 1 *Fœlix, Droit Intern. Privé*, § 105, p. 244.

Thus a life insurance policy was applied for in Illinois to the agent there of a New York company sealed by the company in New York, but conditioned not to be binding until countersigned by the Illinois agent and the premium paid to him. The place of making the contract was held to be Illinois and not New York. *Pomeroy v. Manhattan Life Insurance Co.*, 40 *Illinois Rep.*, 398; *Heebner v. Eagle Ins. Co.*, 10 *Gray (Massachusetts) Rep.*, 131; *Daniels v. Hudson River Ins. Co.*, 12 *Cushing (Massachusetts) Rep.*, 422, 423. The contrary was held in *Huth v. New York Mutual Ins. Co.*, 8 *Bosworth (New York) Rep.*, 551.

Contract made by several parties in different places.

608. Where the same offer to contract is accepted by several persons in different places, the contract of

each is perfected where the last acceptance is completely manifested, as provided in article 607.

Special agreement as to place of consummating contract.

609. The parties to a contract may expressly agree that their contract shall be deemed to be perfected at any place where a specified act or event occurs, although by the provisions of the last article, it would not have that effect.

Thus, if it is agreed that an insurance contract shall commence as soon as an order therefor is accepted by the company's agent, the contract is made at the place where the agent accepts although the principal's stamped policy is executed elsewhere. *St. Patrick Assurance Co. v. Brebner*, 8 *Session Cases*, 1st Series, 51.

Presumed place of making contract.

610. Where the place of making a contract is not shown, it is presumed to be within the exclusive jurisdiction of the nation in whose tribunal it is sought to be enforced.

Thatcher v. Morris, 11 *New York Rep.*, 439, 440.

Implied contracts.

611. The place of making an implied contract is, that, where the act is done which gives rise to the implication.

An implied contract to repay a loan arises where the loan is made. *Suydam v. Barber*, 6 *Duer (New York) Rep.*, 34.

So whether any, and what implied promise arises from services rendered. *Brackett v. Norton*, 4 *Connecticut Rep.*, 520.

Presumption as to place of indorsement of negotiable paper.

612. An indorsement of a negotiable instrument, which does not specify a place where the indorsement was made, is conclusively presumed in favor of a holder, without notice of the place where it was indorsed, to have been indorsed where the instrument purports to have been made.

The indorser is the drawer of a new bill, and contracts where he indorses, not where the drawer or maker contracted. *Story, Confl. of L.*, §§ 307, 314; *Parsons on Notes & Bills*, I., p. 651; *contra*, *Pardessus Droit Commerciale*, p. 17, tit. 7, ch. 2, art. 1500.

Estoppel.

613. Where a party to a contract induces a person to act on the belief that it was made at a particular place, it is deemed as between them to have been made at that place, if such person would be prejudiced by applying the provisions of this Section, to such contract.

Thus a bill dated in Pennsylvania and drawn on London was transmitted before negotiation to the drawer's agent in England where it was negotiated, without notice that it had its inception in England. It was held, that the drawer had expressly agreed that it should be negotiated as a bill drawn in Pennsylvania, and not as a bill drawn in England. *Lenning v. Ralston*, 23 *Pennsylvania Rep.*, 137; 1 *Parsons on Notes & Bills*, 57. To the contrary see *Steadman v. Duhamel*, 1 *Common Bench Rep.*, 888; 1 *Parsons, supra*, 57, *contra*.

SECTION III.

FORMALITIES.

ARTICLE 614. What law determines the existence of contract.

615. Several parties.

What law determines the existence of contract.

614. The formalities requisite for the making of a contract are those, and those only, which are prescribed by the law of the place where it is made.

Story, Confl. of L., §§ 260-262.

Westlake, Private Intern. L., §§ 171, 173. He adds as a doubtful proposition that the law existing at the place of the contract by which a certain description of evidence is made necessary to support an action, is equivalent to one requiring certain solemnities as preliminary to the contract.

If a contract is void by the law of the place where made, unless written on stamped paper, it is so everywhere. *Satterthwaite v. Doughty*, *Busbee's (North Carolina) Law Rep.*, 314.

So, a conveyance in trust of movables is governed as to its form by the law of the place of making it. *Wilson v. Carson*, 12 *Maryland Rep.*, 54.

So, a mortgage of movables valid as to its form where executed, is valid everywhere, even after a removal of the chattels. *Ferguson v. Clifford*, 37 *New Hampshire Rep.*, 56; *Jones v. Taylor*, 30 *Vermont Rep.*, 42.

In some reported cases, the law of the place of performance is held to govern as to form. Thus, by the common law the place of performance of a contract to pay money, no place being named, is any place within the country. Such a contract, made in New Jersey, by a resident of that

State, with a resident of another state, no place of performance being expressed, is to be performed in New Jersey; and its law was held to govern as to form. *Allshouse v. Ramsay*, 6 *Wharton*, (*Pennsylvania*,) *Rep.*, 334.

Several parties.

615. If there are several parties to the contract, the formalities demanded by the law of the place where each one engages are necessary and sufficient in respect to the obligation imposed thereby upon himself.

This rule is laid down with some qualification by *Westlake*, adding that, when a contract to which there are several parties is manifested by a single instrument, the necessary form of that instrument is determined once for all by the law of that place where it begins to have an operation. The illustrations to which he refers are all cases of negotiable paper; in which cases, although it is true, that for the purposes of *transfer* it may be proper to determine the effect of an indorsement, as fulfilling the condition of the promise to pay to order, by the law of the place where the promise to pay was to be performed, (*Everett v. Van Doyes*, 19 *New York Rep.*, 436,) the effect of an indorsement as *creating an obligation* on the part of the indorser, may properly be governed by the law of the place where it is made.

In *Lebel v. Tucker*, (*Law Rep.*, 3 *Queen's Bench*, 77,) it was held that the contract of the acceptor of a negotiable bill which was drawn payable and accepted in the same country is to pay to any order if valid by the law of that country although the indorsement may not have been valid by the law of the country where it was made. It was *held*, however, in *Bradlaugh v. De Rin*, (*Law Rep.*, 3 *Common Pleas*, 538,) that as against the acceptor the validity and effect of an indorsement must depend upon the law of the place where the indorsement was made.

CHAPTER XLVII.

OBLIGATIONS IMPOSED BY LAW.

ARTICLE 616. Prohibited acts.

- 617. Performance or omission of acts beyond jurisdiction of nation.
- 618. Performance or omission of acts authorized by law.
- 619. Ownership and possession of property.
- 620. Law governing damages caused by act or omission beyond the jurisdiction of nation.

Prohibited acts.

616. The obligation arising out of an act prohibited

by the law of the place where done, is determined by such law, except as otherwise provided in this Chapter.

Andrews v. Pond, 13 *Peters' U. S. Supr. Ct. Rep.*, 65. That the law of the place where the wrong is committed determines so far as regards the substance of the matter on which an action of damage is brought, is the rule in America and Scotland, but by the latest English decisions, (*The Halley*, 18 *Law Journ. (N. S.) P. C.*, 879,) the injury must be actionable by the *lex fori*. *Guthrie's Savigny*, p. 205, note.

Performance or omission of acts beyond jurisdiction of nation.

617. An obligation may be created in favor of one member of a nation against another, by reason of an act done or omitted beyond its jurisdiction, although no compensation therefor could be recovered by the law of the place, except as provided in the next article.

Scott v. Seymour, 1 *Hurlstone & Coltman's Rep.*, 234, 235.

Performance or omission of acts authorized by law.

618. No action can be brought for the performance or omission of an act, if such performance or omission were authorized by an express provision of the law of the place, at the time of its occurrence.¹

¹ Dobree v. Napier, 2 *Bingham's New Cases*, 781. The present rule extends this provision to an authorization at any time before the action is commenced.

Ownership and possession of property.

619. The obligations arising from the ownership or the possession of property are determined by the law of the place where the property is for the time being situated.

Law governing damages caused by act or omission beyond the jurisdiction of nation.

620. Where an act or omission occurs within the jurisdiction of one nation, which causes damage solely within the jurisdiction of another, the obligation to make compensation therefor is determined by the law of the latter.

Thus the obligations arising out of an injury to an immovable wherever committed, (*Thayer v. Brooks*, 17 *Ohio Rep.*, 489;) are governed by the law of the place where the property is situated.

PART VI.

ADMINISTRATION OF JUSTICE.

- TITLE XXVII. JUDICIAL POWER.
XXVIII. PROCEDURE.
XXIX. EVIDENCE.
XXX. EFFECT OF JUDGMENTS.
XXXI. RULES APPLICABLE TO PARTICULAR
SUBJECTS.
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TITLE XXVII.

JUDICIAL POWER.

- CHAPTER XLVIII. In civil cases.
XLIX. In criminal cases.
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CHAPTER XLVIII.

JUDICIAL POWER IN CIVIL CASES.

- ARTICLE 621, 622. Remedial justice.
623. When exercise of jurisdiction may be declined.
624, 625. Extra-judicial power.
626. Pursuit of inmate of foreign ship upon the high seas, for crimes, prohibited.
627. Limit of judicial power as to absent persons.
628. Party to the record.
629. Limit of judicial power as to property abroad.
630. Voluntary appearance.
631. Effect of judgment by jurisdiction acquired over property.
632. Effect of judgment by jurisdiction acquired over person.

- 633, 634. Guardianship.
- 635. Forfeitures.
- 636. Actions concerning immovable property.
- 637. Foreign governments and their representatives.
- 638. Public property of one nation within the territory of another.
- 639. Power of consul to appear for member of his nation.
- 640. Judicial power of consuls.

Remedial justice.

621. Foreigners are entitled to free access to the tribunals of the nation, within whose territorial limits they may be, for the prosecution and defense of their rights, in all cases within the jurisdiction of the nation as defined in articles 308 and 309, and are at liberty to employ advocates and agents of whatever description recognized by the local law, whom they may think proper, and in their judicial recourse may enjoy the same privileges and on the same terms,¹ and no others,² as members of the nation. But this right is subject to the conditions respecting security for costs imposed upon transient persons by the laws affecting local tribunals.³

This Article, which is broader than the existing rule of international law, is founded upon the provisions contained in the following treaties :

Treaty between the United States and

Nicaragua,	June 21, 1867, 15 <i>U. S. Stat. at L.</i> , 553.
Honduras,	July 4, 1864, 13 <i>Id.</i> , 703.
Hayti,	Nov. 3, 1864, 13 <i>Id.</i> , 714.
Bolivia,	May 13, 1858, 12 <i>Id.</i> , 1010.
Venezuela,	Aug. 27, 1860, 12 <i>Id.</i> , 1145.
Swiss Confederation,	Nov. 25, 1850, 11 <i>Id.</i> , 588.
Two Sicilies,	Oct. 1, 1855, 11 <i>Id.</i> , 645.
Guatemala,	March 3, 1849, 10 <i>Id.</i> , 878.
San Salvador,	Jan. 2, 1850, 10 <i>Id.</i> , 893.
Costa Rica,	Jan. 10, 1851, 10 <i>Id.</i> , 920.
Peru,	July 26, 1851, 10 <i>Id.</i> , 934.
Argentine Confederation,	July 27, 1853, 10 <i>Id.</i> , 1008.
Hanover,	June 10, 1846, 9 <i>Id.</i> , 865.
New Granada,	Dec. 12, 1846, 9 <i>Id.</i> , 886.
Mecklenburg-Schwerin,	Dec. 9, 1847, 9 <i>Id.</i> , 918.

Treaty between Great Britain and

Colombia,	Feb. 16, 1866, <i>Accounts & Papers</i> , 1867, vol. 74.
Italy,	Aug. 6, 1863, <i>Id.</i> , 1864, vol. 66.
Salvador,	Oct. 24, 1862, <i>Id.</i> , 1863, " 75.
Nicaragua,	Feb. 11, 1860, <i>Id.</i> , 1860, " 68.

Treaty of friendship, commerce and navigation between France and
 New Granada, May 15, 1856, Art. IV., 7 *De Clercq*, 102.
 San Salvador, Jan. 2, 1858, " IV., 7 *Id.*, 362.
 Peru, March 9, 1861, " III., 8 *Id.*, 193.

By the treaty of friendship, commerce and navigation between France and Honduras, Feb. 22, 1856, Art. IV., (7 *De Clercq*, 10,) it is declared, that, foreigners of either nation *are entitled to be present* in the other nation, at all judicial and official investigations, examinations of witnesses and decisions in which they are interested; in all cases in which the laws of the nation allow the publicity of such proceedings.

By the convention between the United States and France, 1831, Art. IV., (8 *U. S. Stat. at L.*, 432,) foreigners may prosecute claims against the government of a nation before the competent judicial or administrative authorities, on complying with its laws and regulations, the dispositions and benefits of which shall be applied to them in like manner as to members of the nation.

Twiss, (1 *Law of Nations*, 225,) states the rule which obtains in Great Britain, the United States, the Germanic States and Holland, in substance, as follows:

A foreigner equally with a citizen may bring a personal action against a foreigner before the tribunals of the country where the defendant may be. He may bring real or possessory actions, before the tribunals of the country where the thing in controversy is.

The French rule is more restricted. See the case of *Casalini* against *Isabella*, ex-Queen of Spain, Feb., 1870.

Some exceptions which are now recognized in the application of this rule should be noticed.

No suit or proceeding can be maintained in the courts of a neutral nation, by the subjects of one belligerent against the subjects of the other for acts growing out of the war. *Juando v. Taylor*, 2 *Paine's U. S. Circ. Ct. Rep.*, 652.

In France, with few exceptions the tribunals do not exercise jurisdiction of controversies between foreigners respecting personal rights and interests, but this is a matter of mere municipal policy and convenience, and does not result from any principles of international law. *Story, Conf. of L.*, § 542.

The American courts make similar exceptions in some cases between the master and seamen of foreign vessels, and other controversies between transient foreigners.

² *De La Vega v. Vianna*, 1 *Barnewall & Adolphus*, 284, 288; *Liverpool Marine Credit Co. v. Hunter*, *Law Rep.*, 3 *Chancery App.*, 486.

³ The right is thus limited by the provisions of several treaties, *e. g.*, Treaty between France and

Sardinia, March 24, 176_, 1 *Felix*, p. 304.

Switzerland, July 18, 1828, 1 *Felix*, p. 304.

The same.

622. The provisions of the last article apply to a for-

eign nation whose existence is recognized by the nation creating the tribunal.

Republic of Mexico v. Arangoiz, 5 *Duer (New York) Rep.*, 634; *Hullett v. King of Spain*, 1 *Dow & Clark's Rep.*, 169; *United States v. Wagner*, *Law Rep.*, 2 *Chancery Appeals*, 582; *King of Prussia v. Keupper*, 22 *Missouri Rep.*, 550.

When exercise of jurisdiction may be declined.

623. Any nation may authorize its tribunals to decline the exercise of jurisdiction in cases between foreigners who have an adequate remedy at home.

See Article 621, note 1.

So far as the nature of the action is concerned, one foreigner may sue another foreigner in American courts for an injury to the person committed in another country, as freely as on a contract made in another country. But for reasons of policy the courts may decline to exercise this jurisdiction, except in special cases. The courts of a country are maintained for the benefit and at the expense of its citizens. It is against public policy to encourage foreigners to bring their matters here for litigation; but if a foreigner flee hither he may be pursued and prosecuted here. *De Witt v. Buchanan*, 54 *Barbour (New York) Rep.*, 31.

Extra-judicial power.

624. No nation can exercise judicial power within the territorial limits of another nation, except in the cases provided for by this Code, or by special compact.

The formality of a treaty is the best proof of the consent and acquiescence of the nation. *Glass v. The Betsey*, 3 *Dallas U. S. Supr. Ct. Rep.*, 6; and see *Jecker v. Montgomery*, 13 *Howard's U. S. Supr. Ct. Rep.*, 498. According to the existing rule, however, it is not the only proof, especially in transactions between European princes and Oriental States, in which cases the existence of a tribunal by sufferance of the local authorities has been held sufficient proof of their consent. Opinions of Sir ROBERT PHILLIMORE, Sir JOHN KARSLAKE and Mr. FORSYTH. *Cases and Opinions in Constitutional Law*, by Forsyth, p. 231, note.

The same.

625. No nation can execute its process within the exclusive jurisdiction of another. Every act done in attempting such execution is a mere nullity, incapable of binding persons or property anywhere.

Story, Conf. of L., § 539, extended by making the nullity universal, not merely a rule for other jurisdictions.

Pursuit of inmate of foreign ship upon the high seas, for crime, prohibited.

626. An inmate of a foreign ship who commits an in-

fraction of the criminal law of a nation,¹ within its territory, cannot be pursued beyond its territory into any part of the high seas.²

¹ This would not prohibit such pursuit in cases of infraction of this Code, *e. g.*, piracy.

² See *Bluntschli, Droit Intern. Codifié*, § 342, to the contrary.

Limit of judicial power as to absent persons.

627. Except as provided in this Code, a nation can exercise no judicial power over a person within the exclusive jurisdiction of another nation, other than that which it may exercise through his allegiance.

The exceptions are where the absent person; (1) voluntarily appears; or, (2) has some personal relation, as that of husband, wife or parent, to some person who is within the jurisdiction; or, (3) was within the jurisdiction at the commencement of the proceedings, but afterwards absented himself.

The object of these provisions is not to define the cases in which each nation will exercise judicial power, but to state those cases in which it is thought the exercise should be prohibited. In cases not within these prohibitions, each nation may or may not exercise judicial power as it deems proper.

The judicial power in civil cases will extend in general over the following classes of persons and property: (1.) All property movable or immovable within the territorial limits; (2.) All public national property, and shipping having the national character; (3.) All persons within the legal territorial or extra-territorial jurisdiction, as defined by Articles 308 and 309; and (4.) All the members when not within the exclusive jurisdiction of any other nation.

It, perhaps, should be added, that in cases affecting directly the status or social relations existing between two or more persons, the power to adjudge relief to a person domiciled within the state is not necessarily affected by the absence of another party to the relation. Thus, for instance, an order of filiation is held valid under the English statute if founded on service of summons at the last place of abode of the putative father, although it be shown that the man was at the time absent in a foreign country. *The Queen v. Damarell, Law Rep., 3 Queen's Bench, 50.*

Party to the record.

628. The party to the record is the person on whom the jurisdiction of a tribunal depends, where the jurisdiction depends on the person.

Thus a bill lies to enforce an equitable interest in lands held by the defendant in trust for a foreign government. *Sharp's Rifle Manufac. Co. v. Rowan, 34 Connecticut Rep., 329.*

Limit of judicial power as to property abroad.

629. Except as provided in this Code,¹ a nation can exercise no judicial power over private property, which is within the exclusive jurisdiction of another nation, other than such² as it may exercise by controlling the acts of its owner.

¹ See Article 627, note.

² This exception will include such cases as the jurisdiction to enforce specific performance of a contract to convey lands in another nation; or to cancel a usurious mortgage on such lands; or to require an assignment by a bankrupt including foreign assets.

Voluntary appearance.

630. In civil cases, a voluntary appearance of any person, natural or artificial, may be treated as equivalent to personal presence and service within the jurisdiction.

The following authorities, extend the jurisdiction to all persons although beyond the territory, who voluntarily submit themselves to the jurisdiction of the nation in the manner prescribed by its laws in force at the time of such submission. *Meeus v. Thellusson*, 8 *Exchequer Rep.*, 638.

"It is not contrary to natural justice that a man who has agreed to receive a particular mode of notification of judicial proceedings should be bound by a judgment in which that particular mode of notification has been followed, even though he may not have had actual notice of them." *Vallee v. Dumergue*, 4 *Exchequer Rep.*, 290, 303.

"Not only is such a clause binding," (*i. e.*, "a clause that the party in question elects for the purpose of the instrument, a certain spot as his domicile,") "but so also even without express stipulation to that effect is a provision of the law of the place of contract declaring a certain transaction to be of its own force an election of domicile there." *Westlake, Private Intern. Law*, § 383; *Vallee v. Dumergue*, 4 *Exchequer Rep.*, 290.

So in several of the United States there are statutes providing that contracts executed and to be performed by foreign corporations within the territory, may be enforced there after service of process on the person who represented the foreign company in making the contract, but has ceased to be its agent. *Lafayette Insurance Co. v. French*, 18 *Howard U. S. Supr. Ct. Rep.*, 407; *Gillespie v. Commercial Ins. Co.*, 12 *Gray (Massachusetts) Rep.*, 201.

Effect of judgment by jurisdiction acquired over property.

631. A judgment in a case which is brought within the judicial power of the nation, by reason of the presence or character of the property merely, the person not being subject to the jurisdiction, binds the prop-

erty everywhere; but cannot bind the person anywhere, except in relation to such property, and its application.

Story, Confl. of L., § 546. *Green v. Van Buskirk*, 7 *Wallace U. S. Supr. Ct. Rep.*, 139.

Effect of judgment by jurisdiction acquired over person.

632. A judgment, affecting property in a case which is brought within the judicial power of the nation, by reason of the person merely being subject to the jurisdiction, binds such person everywhere, but cannot directly bind property which is not subject to the judicial power of the nation.

Story, Confl. of L., § 543.

Guardianship.

633. The courts of a nation have power to appoint a guardian of the person of an infant who is within their jurisdiction and there domiciled, or of property within their jurisdiction belonging to an infant who is within or without their jurisdiction.

See *Johnson v. Beattie*, 10 *Clark & Finnelly's Rep.*, 42; *McLoskey v. Reid*, 4 *Bradford's Surrogate (New York) Rep.*, 334; *Stephens v. James*, 1 *Mylne & Keen's Rep.*, 627.

The same.

634. The courts of a nation may interfere to protect the person and property of one not having legal capacity, if such person is within their jurisdiction, notwithstanding the existence of a foreign guardianship; and to appoint a new guardian for such purpose.

In cases other than of infancy the courts of a nation may determine the question of legal incapacity, upon which the appointment of a guardian depends, so far as it affects the person and movables, unless the person be domiciled in another nation whose courts have determined such capacity; and in all cases may determine such question as to immovables within its own limits, with the effect prescribed in article 558.

Forfeiture.

635. An action for a forfeiture can be brought only in a court of the nation imposing the forfeiture. The term

“forfeiture,” as used in this article, means a penalty for a wrong, without any necessary relation to the actual damage.

Westlake, Private Intern. Law, § 403; *Story, Conf. of L.*, § 621.

For example, a statute making officers of a corporation liable for its debts when they fail to make report of the condition of the corporation. *Derickson v. Smith*, 3 *Dutcher (New Jersey) Rep.*, 166.

Actions concerning immovable property.

636. Actions to recover immovable property, or for injuries¹ thereto,² can be brought only in the nation within whose territory the property is situated.

Story, Conf. of L., § 554.

¹ *Doulson v. Matthews*, 4 *Term Rep.*, 503; *Livingston v. Jefferson*, 1 *Brockenbrough U. S. Circ. Ct. Rep.*, 203; *Watts v. Kinney*, 6 *Hill (New York) Rep.*, 87; *Northern Indiana R. R. v. Michigan Central R. R.*, 15 *Howard U. S. Supr. Ct. Rep.*, 242-244.

² *Rogers v. Woodbury*, 15 *Pickering (Massachusetts) Rep.*, 156.

Foreign governments and their representatives.

637. A nation can exercise no judicial power over foreign sovereigns; nor over the property of foreign states, nations or sovereigns; except such property as against the will of the nation is within its jurisdiction, and except also as provided in the next article.

The exemption of agents of international intercourse is defined by Articles 139 and 140.

Duke of Brunswick v. King of Hanover, 2 *Clark & Finnelly's Rep.*, (N. S.) 1.

A foreign sovereign is not amenable to the courts of another country for any act done by him as a sovereign in his own country; and does not by appearing to a suit waive his right to take that defense; but if he also had the character of a subject of the country, distinct from that of a foreign sovereign, he may in respect of acts done in that character be made amenable. *Duke of Brunswick v. King of Hanover*, 6 *Beavan's Rep.*, 1; 2 *House of Lords Cas.*, 1.

Public property of one nation within the territory of another.

638. The judicial powers of a nation extend to the public property of another nation situated within the territory of the former, for the following purposes only:

1. For the purposes of eminent domain;¹
2. For the enforcement of a lien upon such property

created within the jurisdiction, unless claimed by a member of the nation to which the property belongs ; and,

3. To cut off such a lien held by the former nation or its members ;

Subject to the power of the nation in the last two cases to take possession of the property, for the benefit of the foreign nation, on indemnifying the creditor.

¹ See Article 50.

Power of consul to appear for member of his nation.

639. A consul has power to appear before any court or tribunal, in case of necessity, on behalf of any member of his nation who may be absent, incapable, or not well represented.

Treaty between the United States and New Granada, May 4, 1850, Art. III.

Special authority from the parties in interest is not necessary. *Blunschli, Droit International Codifié*, § 256 ; 1 *Kent's Commentaries*, 42.

Judicial power of consuls.

640. The consuls of any nation have jurisdiction to determine controversies of every nature¹ arising either at sea or in port, between the officers and crews, or any of them, of ships² belonging to the nation of the consul, without the interference of the local authorities, unless the conduct of the parties disturbs the peace ;³ but without prejudice to the right of the parties to resort, on their return, to the judicial authority of their own nation.⁴

By the Act of Congress of the United States, (March 5, 1855, "to regulate the carriage of passengers on steamships and other vessels,") all disputes and differences of any nature between the captains and their officers on the one hand, and the passengers of their ships on the other, shall be brought to and decided by the circuit or district courts in the United States, to the exclusion of all other courts or authorities ; and this provision is made a part of the treaty between the United States and Italy, Feb. 8, 1868, Art. XII., 15 *U. S. Stat. at L.*, (Tr.), 185.

In the case of the "Golubchick," 1 *W. Robinson Rep.*, 148, 153, it was held that the Court of Admiralty has a right to interfere in suits for wages prosecuted by foreign seamen against foreign vessels.

Consent of the foreign minister or consul is not essential to found the jurisdiction of the court in such a case. It is necessary, however, that notice of intended proceedings should be given in the first instance to the representative of the government to which the vessel proceeded against belongs.

In *La Blache v. Rangel*, *Law Rep.*, 2 *P. C. App.*, 38, Lord ROMILLY

held, that if a foreign consul, by protest, objects to the prosecution of a suit, the Court of Admiralty will determine whether it is proper that the suit should proceed or be stayed. Such protest does not *ipso facto* operate as a bar to the prosecution of the suit, as the foreign consul has not the power to put a *veto* on the exercise of jurisdiction by the Court of Admiralty.

The consul may thus intervene even against the claim of a member of the nation; it is the nationality of the vessel, and not the nationality of the individual seaman suing for wages, that regulates the course of procedure.

¹ Convention between the United States and Italy, Feb. 8, 1868, Art. XI., 15 *U. S. Stat. at L.*, 609.

² Perhaps this should be expressly restricted to private ships.

³ Some of the French treaties qualify this by the additional exception of cases, "where a member or inhabitant of the country or one not attached to the vessel is involved."

⁴ Treaty between the United States and

Denmark, July 11, 1861, Art. I., 13 *U. S. Stat. at L.*, 605.

Venezuela, August 27, 1860, "XXVI., 12 *Id.*, 1143.

Many other treaties contain substantially similar provisions.

CHAPTER XLIX.

JUDICIAL POWER IN CRIMINAL CASES.

ARTICLE 641. Criminal jurisdiction of a nation over its own members.

642, 643, 644. Criminal jurisdiction of a nation over foreigners.

645. Torts against immigrants by carriers.

646. Conspiracies against foreign government.

647. Limit of punishment of foreigners.

648. Punishment on foreign private ships.

649. Foreigners within a nation without their consent.

650. Pirates subject to the criminal jurisdiction of all nations.

Criminal jurisdiction of a nation over its own members.

641. The members of a nation are subject to criminal prosecution in its own tribunals, and in no others, for an infraction of its criminal law committed within its ex-

clusive jurisdiction, except as provided by this Chapter.

For such infractions committed within its concurrent jurisdiction, they are thus subject until tried for the same acts¹ and convicted or acquitted in a competent tribunal of the nation where the act was committed.

¹ Although the act committed within the concurrent jurisdiction may constitute a different crime by the law of each of the nations, there seems to be no reason for allowing a double punishment.

Criminal jurisdiction of a nation over foreigners.

642. The administration of criminal justice by a nation, through its tribunals, extends to foreigners actually within its territorial limits, who have committed an infraction of its criminal law in whole or in part,¹ either,

1. Within its territorial limits ; or,
2. On board the public vessels of the nation in any place whatever ; or,
3. On board the private vessels of the nation on the high seas ; or,
4. On board the private vessels of the nation, within the territorial jurisdiction of another nation, if the offender have not been already tried for the act in question and acquitted, or convicted in a competent tribunal of the nation where the offense was committed.

¹ One whose act in one country causes death in another, may be tried in either. Opinion of Sir J. MARIOTT in *Cases & Opinions in Constitutional Law*, by Forsyth, p. 217.

In *State v. Grady*, 34 *Connecticut Rep.*, 118, the rule laid down was, that, no State can punish criminally an act which was wholly committed without its territorial jurisdiction, but if any part of the criminal act be committed within the jurisdiction, the offender, whether he was at the time within the jurisdiction or not, may be punished, if jurisdiction can be obtained of his person.

Crimes committed on the high seas whether on board public or private ships are considered as committed in the territory of the nation to which the ship belongs, whether the accused be of the nationality of the ship or a foreigner, and whether the crime were committed against a fellow-countryman or between foreigners. *Riquelme, Derecho Internacional*, tom. I., pp. 243, 245, as quoted and approved by Attorney-General CUSHING, 8 *Opinions of U. S. Attorn.-Gen.*, 73, and *Cases & Opin. in Constitutional Law*, by Forsyth, p. 412.

It is there added, in explanation of the rule, that if the ship, on board

of which the crime had been committed, arrives at a port, the jurisdictional right of the nation to which the ship belongs over the accused does not on that account cease. So that if the accused were a foreign subject of the nation to which the port belongs, at which the ship stops, even in that case it is the right of the captain to detain him on board, that he may be judged by the tribunals of the ship's country. And if this passenger should get on shore, and should institute before the tribunals of his country proceedings against the captain, the local authority will be incompetent to judge the foreign captain, because the fact in question occurred in a foreign country,—that is, on board a foreign vessel on the high seas,—and because, by embarking on that ship, the party is presumed to have submitted himself to the laws of the foreign territory of which the ship constitutes a part.

Compare 18 and 19 *Vict.* ch. 91, § 21; *The Queen v. Lopez*, 27 *Law Journ., Mag. Cases*, 48; *Cases & Opinions in Constitutional Law*, by Forsyth, p. 235; and United States Crimes Act of 1825, 4 *U. S. Stat. at L.*, 115.

Riquelme, cited above, lays down the rule that, crimes committed on board a private vessel within the territorial jurisdiction of a nation are cognizable by the courts of that nation, unless the offense affects only the interior discipline of the ship without disturbing or compromising the tranquility of the port and without affecting a citizen or domiciled resident of the country, and the local authorities must not interfere except at the instance of the consul and in aid of the jurisdiction of the nation to which the vessel belongs.

The conflict of authorities in reference to this rule will be found reviewed in *Bishop on Criminal Law*, §§ 595–600.

The same.

643. The criminal jurisdiction of a nation extends to foreigners :

1. Who commit theft beyond its limits, and bring, or are found with, the property stolen, within the same ; or,

2. Who, being beyond its limits, abduct or kidnap, by force or fraud, any person, contrary to the laws of the place where such act is committed, and send or convey such person within the limits of the nation, and are afterwards found therein ; or,

3. Who, being beyond its limits, cause, or aid, advise or encourage, another person to commit any act, or be guilty of any neglect within the same, which is a criminal act or neglect according to the laws of the nation, and who are afterwards found within its limits.

Penal Code, Reported for New York, § 15.

The same.

644. The criminal jurisdiction of a nation extends also to foreigners found within its jurisdiction, who have committed at any place beyond its territorial limits either as principals or accessories any of the following infractions of its criminal law :

1. A crime against its national safety ; or,
2. Counterfeiting or forging its national seal, national papers, national money having currency within its limits, or bills of any bank authorized by its laws.

These provisions are taken from the Law of June 27, 1866, amending Articles 5, 6 and 7 of the *French Criminal Code*, vol. 9, p. 557.

Torts against immigrants by carriers.

645. Carriers, of whatever nationality, who bring the aggrieved person within the territorial limits of a nation, are punishable through its tribunals for any wrong committed by them against an immigrant, which, if committed within its exclusive jurisdiction, would be an infraction of its criminal law.

According to the opinions of Sir JOHN DODSON, Sir JOHN ROMILLY and Sir A. E. COCKBURN, (*Forsyth's Cases & Opinions in Constitutional Law*, p. 228,) the courts of Great Britain and of her colonies now have no such jurisdiction in case of injuries committed on the high seas under a foreign flag.

This Article is proposed to obviate such a failure of justice.

Conspiracies against foreign nation.

646. Conspiracies formed within the jurisdiction of one nation against the government of a friendly nation and carried into effect by overt acts, are punishable by either nation within whose jurisdiction the offender is found.

See *Regina v. Benard*, 1 *Foster & Finlason's Rep.*, 240 ; *Cases & Opinions in Constitutional Law*, by *Forsyth*, p. 236.

Limit of punishment of foreigners.

647. No greater punishment can be inflicted by any nation on a foreigner than is allowed by the law of the place to be inflicted on a member of the nation in a like case.

Punishment on foreign private ships.

648. No punishment can be inflicted on board of

private ships of one nation, within the territorial jurisdiction of another, greater than is allowed by the law of the latter, for the like offense committed on board of domestic ships.

Foreigners within a nation without their consent.

649. The provisions of article 642 apply to foreigners brought or being within the territory of a nation without their free consent.

Regina v. Lopez, 7 *Coxe's Criminal Cases*; S. C., 1 *Dearsly & Bell's Crown Cases*, 525.

See *People v. McLeod*, 25 *Wendell (New York) Rep.*, 602. "It is a well settled rule of international law that a foreigner is bound to regard the criminal laws of the country in which he may sojourn, and for any offense there committed he is amenable to those laws. . . . His escape into Canada did not purge the offense nor oust our jurisdiction. Being retaken and brought in fact within our jurisdiction, it is not for us to inquire by what means or in what precise manner he may have been brought within the reach of justice." *State v. Brewster*, 7 *Vermont Rep.*, 122, 123.

"There is no offense in trying, and, if he be guilty, convicting the subject of a foreign government who has been guilty of a violation of our laws within our jurisdiction; or if he had made his escape from our jurisdiction and by any accident were thrown within it again; if he were shipwrecked on our coast, or fraudulently induced to land by a representation that it was a different territory, with a view to his being given up for prosecution, there would seem to be no reason for exempting him from responsibility to our laws." *State v. Smith*, 1 *Bailey Law Rep.*, 292.

See *Exp. Scott*, 9 *Barnewall & Cresswell's Rep.*, 446; *Bishop's Criminal Law*, § 694; *Britton's Case*, 2 *City Hall Rec.*, (*New York*), 119.

Pirates subject to the criminal jurisdiction of all nations.

650. Persons guilty of piracy, as defined in Chapter X., on PIRACY, are subject to be tried in the courts of any nation within whose jurisdiction they are found, and to be punished as its laws prescribe.

Every human being, whether belonging to a civilized or uncivilized community, and with or without social or political ties, is under the protection of law, and if he does not belong to a nation having a recognized government, an injury to his person or property by a member of any nation, party to this Code, shall be deemed a violation of public law, and punishable as piracy.

TITLE XXVIII.

PROCEDURE.

ARTICLE 651, 652. Law of the forum.

653, 654. Measure of damages.

655. Absence of proof of foreign law.

Law of the forum.

651. The form of the remedy and the mode of procedure are governed by the law of the place where the proceeding is taken.

Story, Confl. of L., §§ 556, 575 *et seq.*; *Carver v. Adams*, 38 *Vermont Rep.*, 500; *Sherman v. Gasset*, 4 *Gilman (Illinois) Rep.*, 521; *Mason v. Dousay*, 35 *Illinois Rep.*, 424.

"On matters of procedure all mankind whether aliens or liege subjects . . . are bound by the law of the forum. If a law were made upon this subject working oppression and injustice to the subjects of a foreign State, that State might make representations and remonstrances against this law to our government; but while it remains in force judges have no choice but to give it effect." *Lopez v. Burslem*, 4 *Moore's Privy Council Rep.*, 305.

The rule extends to the question of parties to a judicial proceeding. *Westlake, Private International Law*, 409; *Kirkland v. Lowe*, 33 *Mississippi Rep.*, 423; *Wilson v. Clark*, 11 *Indiana Rep.*, 385; *Foss v. Nutting*, 80 *Massachusetts (14 Gray) Rep.*, 484; *Blane v. Drummond*, 1 *Brockenbrough U. S. Circ. Ct. Rep.*, 62; *Raymond v. Johnson*, 11 *Johnson's (New York) Rep.*, 490; *Roosa v. Crist*, 11 *Illinois Rep.*, 450.

The rule extends to the admissibility of a set-off, counter-claim, recoupment or compensation. *Story, Confl. of L.*, § 575; *Westlake's Private Intern. L.*, § 411; 2 *Parsons on Contracts*, 592; *Bank of Galliopolis v. Trimble*, 6 *B. Monroe (Kentucky) Rep.*, 599.

The rule extends to defenses under statutes of limitation.

Mr. *Westlake*, however, contends that statutes of limitation are essential modifications of the rights created by the jurisprudence in which they exist, principally on the ground that "a right is only a faculty of putting the law in force,"—*i. e.*, by means of an active judicial remedy. The definition is certainly opposed to authority, (*Lindsay's Introduction to Jurisdiction*, App. CXV., CXXVI.; *Windscheid Pandekten*, §§ 37, 288;) and does not agree with the rule, that, a lien, mortgage or pledge, is not extinguished by the limitation having attached to the principal obligation, (*Civil Code, reported for New York*, § 1605; *Brent v. Bank of Washington*, 10 *Peters' U. S. Supr. Ct. Rep.*, 596; *Eastman v. Foster*,

49 *Massachusetts Rep.*, 24; 1 *Washburn on Real Property*, Book I., ch. 16 § 28, p. 561;) and in general, it is certain that a lien may exist although no action lies to enforce it. *Re Bromhead*, 16 *Law Journ., Queen's Bench Rep.*, 355; *Kellett v. Kelly*, 5 *Irish Equity*, 34, 37; *The Siren*, 8 *Wallace U. S. Supr. Ct. Rep.*, 158.

The same.

652. Where the law of the place not only bars the remedy but vests the title to personal property or extinguishes the right; the title so acquired, or right so extinguished remain the same everywhere.

Fears v. Sykes, 35 *Mississippi Rep.*, 633; *Mosely v. Williams*, 5 *Howard U. S. Supr. Ct. Rep.*, 523; *Shelby v. Gay*, 11 *Wheaton U. S. Supr. Ct. Rep.*, 362.

A statutory prescriptive title acquired by possession extends to cases where the possession is beyond the territory of the State enacting the statute, if the action to enforce the title is brought within such territory. *Blackburn v. Morton*, 18 *Arkansas Rep.*, 384.

Measure of damages.

653. The measure of compensation in damages which may be awarded in a judicial proceeding is governed by the law of the place where the cause of action arose.

The foreign penalty cannot be also awarded, 22 *Illinois Rep.*, 609. Where the statutes of a State, making shareholders in a corporation liable for the debts of the corporation,—prescribe the remedy to enforce the same, the courts of another State will not allow creditors to pursue against its own citizens a different remedy which will operate with greater hardship upon them. *Erickson v. Nesmith*, 81 *Massachusetts Rep.*, 221; *Halsey v. McLean*, 94 *Massachusetts Rep.*, 438.

The same.

654. Where money is the object of the proceeding, the tribunal must allow that sum in the currency of the country where the proceeding is brought, which will place the party in funds to the amount due in the country where the debt is payable, calculated by the real par and not by the nominal par of exchange.

Story, Conf. of L., § 309.

The measure of damages is the amount in the money of the forum which is there equal to the sum which the plaintiff was entitled to abroad.

Stanwood v. Flagg, 98 *Massachusetts Rep.*, 124; *Nickerson v. Soesman*, 98 *Id.*, 364; *Cushing v. Wells*, 98 *Id.*, 550; *Marburg v. Marburg*, 26 *Maryland Rep.*, 8; *Benness v. Clemens*, 58 *Pennsylvania State Rep.*, 24.

Absence of proof of foreign law.

655. The tribunals must in every case apply the law of their own nation, unless a foreign law applicable to the case is shown.

Foulke v. Fleming, 13 *Maryland Rep.*, 392; Bean v. Briggs, 4 *Iowa Rep.*, 464; interpretation, Whidden v. Seelye, 40 *Maine Rep.*, 247. To the contrary, Cammell v. Sewell, 5 *Hurlstone & Norman Rep.*, 740. *Civil Code, reported for New York*, § 1887.

A party who relies upon a right or an exemption by foreign law, is bound to bring such law properly before the court and establish it in full, otherwise the court, not being entitled to take notice of such law without judicial proof, must proceed according to the law of its own nation. Lloyd v. Ginbert, *Law Rep.*, 1 *Queen's Bench*, 115.

It is a well settled rule founded on reason and authority, that the *lex fori*, or in other words, the law of the country to whose courts a party appeals for redress, furnishes in all cases, *prima facie*, the rule of decision; and if either party wishes the benefit of a different rule or law, as, for instance the *lex domicilii*, *lex loci contractus*, or *lex loci rei sitæ*, he must aver and prove it. Norris v. Harris, 15 *California (Harmon) Rep.*, 226. To this rule, an exception has heretofore been recognized to some extent in the United States by presuming that the common law prevails.

TITLE XXIX.

EVIDENCE.

ARTICLE 656. Admissibility and effect of evidence.

657, 658. Notary's certificate.

659. Evidence of foreign laws.

660. Record, how authenticated.

661. Oral evidence of foreign record.

662. Manner of proving other official documents.

663. Contents of official certificates.

664. Taking foreign testimony.

665. Form of oath or affirmation.

Admissibility and effect of evidence.

656. The law of the nation within whose jurisdiction a tribunal acts, determines the admissibility and effect of evidence produced before it.

Blocker v. Whittenburg, 12 *Louisiana Annual Rep.*, 410.

Westlake's Private Intern. Law, §§ 172, 177, 412.

Some authorities, however, make an exception to this rule in the case of books of account; and state that their effect as evidence is governed by the law of the place where they are kept. See *Story, Confl. of L.*, § 635; *Felix, Droit International Privé*, I., p. 461.

The presumptions arising from a contract are said by *Demangeat*, 1 *Felix, Dr. Intern. Privé*, p. 461, note (a,) to be within this rule; but the opinion of *Felix*, (1 *Id.*, p. 460,) to the contrary is considered to be correct.

Notary's certificate.

657. The certificate of a notary, if made under his signature and seal of office, is sufficient in form wherever produced in evidence.

In re Davis' Trusts, *Law Rep.*, 8 *Equity Series*, 98.

Where an affidavit is sworn before a notary abroad, the signature must be verified by oath before it can be received here, though the rule has been relaxed where the fund was very small, (*Mayne v. Butler*, 13 *Weekly Rep.*, 128.)

In re Earl's Trusts, 4 *Kay & Johnson's Rep.*, 300.

The same.

658. The certificate by a notary¹ of his presentment

for and demand of acceptance or payment of any instrument which is negotiable by the law of the place where it is payable, and of the refusal of either, and of his protest of such instrument, and of his service of notice thereof on any or all the parties, specifying the mode of giving such notice and the reputed place of residence of the party to whom the same was given, creates a disputable presumption of the facts contained in such certificate² as against all persons, but not in favor of the notary himself or his successors in interest.³

¹ A uniform rule seems desirable in the case of negotiable paper, leaving the effect of other notarial certificates to be governed by the law of the forum. The American courts hold that the admissibility and effect of a notary's certificate are governed by the law of the forum. *Kirkland v. Wanzer*, 2 *Duer (New York) Rep.*, 278; *Blocker v. Whittenburgh*, 12 *Louisiana Annual Rep.*, 410; *Gault v. Gault*, 12 *Id.*, 673. An exception is made by the *Laws of New York*, 1865, ch. 309, in the case of a protest, &c., of a foreign bill, note or check.

² *Laws of New York*, 1833, ch. 271, § 8; *Bank of Vergennes*, 7 *Barbour (New York) Rep.*, 143.

³ This exception is omitted in the New York statute, but seems a reasonable one.

Evidence of foreign laws.

659. Copies of statutes, codes or other written laws, and of the proclamations, edicts, decrees and ordinances of the executive power of any foreign nation, when authenticated by the great or principal seal of the nation, or printed in its books or documents purporting or proved to have been published by the authority thereof, or proved to be commonly admitted as evidence of the existing law, in the tribunals of such nation, are to be admitted by the tribunals of other nations, on all occasions, as presumptive evidence of such laws, proclamations, edicts, decrees and ordinances. The unwritten or customary law of a nation may be proved by oral evidence; and the books of reports of cases adjudged in its tribunals, may also be admitted as presumptive evidence of such law.

See *Laws of New York*, 1869, ch. 883.

The unwritten law of a foreign country is a fact to be proved, as other facts, by the testimony of experts; the statutory law, by the law itself, or an exemplified copy.

Baltimore & Ohio R. R. Co. v. Glenn, 28 *Maryland Rep.*, 287; Gardner v. Lewis, 7 *Gill (Maryland) Rep.*, 377; De Sobry v. De Laistre, 2 *Harris & Johnson's (Maryland) Rep.*, 191.

A construction given to the statutes or constitution of a State by its supreme judicial tribunal, is to be followed by the courts of other States. Franklin v. Twogood, 25 *Iowa Rep.*, 520.

Record, how authenticated.

660. A judicial record of a foreign nation may be proved by the attestation of the clerk, with the seal of the tribunal annexed, if there be a clerk and seal, or of the legal keeper of the record with the seal of his office annexed, if there be a seal, together with a certificate of the chief judge or presiding officer, that the person making the attestation is the clerk of the tribunal or the legal keeper of the record, and in either case that the signature of such person is genuine; together with the certificate of the minister or other officer having charge of foreign affairs of the nation, under whose authority the record is kept, and having the custody of the great or principal seal of such government, to the effect that the tribunal whose judicial act is certified, had jurisdiction to perform such act, verifying the signature of the clerk, or other legal keeper of the record, and also verifying the signature of the chief judge, or presiding officer.

Oral evidence of foreign record.

661. A copy of the judicial record of a foreign nation is also admissible in evidence, upon proof,

1. That the copy offered has been compared by the witness with the original, and is an exact transcript of the whole of it;

2. That such original was in the custody of the clerk of the tribunal, or other legal keeper of the same; and,

3. That the copy is duly attested by a seal, which is proved to be the seal of the tribunal where the record remains, if it be the record of a tribunal, or if there be no such seal, or if it be not a record of a tribunal, by the signature of the legal keeper of the original.

Manner of proving other official documents.

662. Other foreign official documents may be proved as follows :

1. The acts of the executive, or the proceedings of the legislature, by journals published by their authority, or commonly received as such within the jurisdiction of the nation, or by a copy certified under the seal of the nation or sovereign, or by a recognition thereof, in some public act of the executive.

2. Foreign documents of any other class, by the original, or by a copy certified by the legal keeper thereof, with a certificate under the seal of the nation or sovereign, that the document is a valid and subsisting document of such nation, and that the copy is duly certified by the officer having the legal custody of the original.

Contents of official certificates.

663. Whenever a copy of a writing is certified for the purpose of evidence, the certificate must state that the copy has been compared by the certifying officer with the original, and is a correct transcript therefrom, and of the whole of such original, or of a specified part thereof. The official seal, if there be any, of the certifying officer, must also be affixed to the certificate.

Taking foreign testimony.

664. It is the duty of the tribunals of a nation to assist the tribunals of other nations in procuring evidence on the application, duly authenticated, of such foreign tribunals, transmitted in the manner prescribed by the law of the nation where the evidence exists.

Nelson v. United States, 1 *Peters' U. S. Circ. Ct. Rep.*, 236, note.

Petition of Jay and Clerke, 5 *Sandford's (New York) Rep.*, 674.

This mode of proceeding was, however, disapproved in *Ferrie v. Public Administrator*, 3 *Bradford's Surrogate (New York) Rep.*, 249, 264, as exposed to the objection that it removed the investigation into a foreign court and subjected it to foreign rules of evidence.

The French tribunals execute letters rogatory, which are transmitted to them by the Minister of Justice, who receives them from the Minister of Foreign Affairs. *Félix, Droit Intern. Privé*, I., p. 466. Similar provisions exist in Austria, *Id.*, p. 472.

In the United States the courts act without these formalities.

Form of oath or affirmation.

665. An oath or affirmation administered in the form required by the law of the nation within whose jurisdiction it is administered, on the requisition of a foreign tribunal specifying no form, is a sufficient authentication of the testimony of a witness.

See *Félix, Droit Intern. Privé*, I., §§ 247-249.

TITLE XXX.

EFFECT OF JUDGMENTS.

ARTICLE 666. Force of public or judicial acts.

667. Effect of foreign judgments.

668. Impeachment of foreign judgment.

669. Foreign judgment, forbidden to be enforced.

670. Consent to execution of foreign judgment.

671. Judgment *in rem*.

672. Judgment as to status of a person.

673. Effect of foreign judgments of divorce, insolvency and succession.

Force of public or judicial acts.

666. Full faith and credit shall be given in each nation to the public acts, records and judicial proceedings of the tribunals of every other nation,¹ party to this Code, in cases within its jurisdiction, as herein defined.

This is the rule adopted between the States of the American Union, by the *Constitution of the United States*, Art. IV., § 1.

¹ This should apply even though jurisdiction was assumed under the express direction of positive law, (*Bishop on Marriage and Divorce*, vol. II., § 132; *Rose v. Himely*, 4 *Cranch's U. S. Circ. Ct. Rep.*, 241,) and to judgments *in rem* or determining *status*, as well as to personal judgments.

The concluding qualification here added, referring to the uniform limit of jurisdiction prescribed by this Code, will preclude the uncertainty which has arisen in the American courts in the application of the rule (*United States Constitution*, Art. IV., § 1) to cases where one State is accustomed to exercise jurisdiction under circumstances in which another would refuse to exercise it, and therefore would refuse to give effect to a judgment of the former.

It may, perhaps, be thought desirable that this provision should be extended to judgments, &c., of the nations which are not parties to this Code.

Effect of foreign judgments.

667. A personal judgment has no effect beyond the jurisdiction of the nation within which it was rendered, nor within such jurisdiction as against foreigners,¹ unless it appears from the record itself or other proof that it was rendered ;

1. By a competent tribunal ; and,
2. Between parties either duly appearing, or cited, and legally represented, or defaulting.²

The record is nevertheless open to contradiction in respect to any jurisdictional fact alleged therein.

¹ It seems impossible to give this rule its proper effect, if it is applied to foreign judgments only. If an English surety should sue his American principal in Scotland for money obtained from the surety under the compulsory process of a suit in Scotland without due appearance or citation, the judgment in that suit ought not to be evidence against the principal, even in Scotland.

² By the declaration of September 11, 1860, between France and Sardinia for the reciprocal execution of decrees and judgments of *superior* courts, (8 *De Clercq*, 118,) it was provided that a court in considering a foreign judgment can question it only in the three following points:—First, whether the decision was that of a competent tribunal ; second, whether it was rendered between parties duly cited and legally represented or defaulting ; third, whether the rules of public law or the interests of public order in the country where the execution of the judgment is demanded are opposed to the enforcement of the decision of the foreign tribunal.

The enactment of a provision creating a presumption in favor of the competency of a superior tribunal does not seem desirable, particularly as it is easier to prove the competency of a court than to disprove it. See *Laws of New York*, 1865.

By the rule which prevails among the American States, however, a judgment of a superior court of another State is presumed to have been rendered in a case where the court had jurisdiction unless the want of jurisdiction affirmatively appears by the record or by other proof. *Bissell v. Wheelock*, 65 *Massachusetts Rep.*, 277 ; *Buffman v. Stimpson*, 87 *Id.*, 591 ; *Dunbar v. Hallowell*, 34 *Illinois Rep.*, 168 ; *Sanford v. Sanford*, 28 *Connecticut Rep.*, 6 ; *Gordon v. Robinson*, 15 *Maine Rep.*, 167 ; *Rankin v. Goddard*, 54 *Id.*, 33. This appears also to be the rule applied by the English courts to foreign judgments. *Barber v. Lamb*, 8 *Common Bench Rep.*, 95, and cases there cited.

Some earlier authorities tend to the conclusion that a foreign judgment cannot be disputed where the court by which the judgment was rendered has jurisdiction of the subject of the suit and of the parties.

These rules are only applied by the English courts, where it appears that the judgment was on the merits, and that by the law of the place where it was recovered, the decision was final. *Frayes v. Worms*, 10 *Common Bench Rep.*, (N. S.), 153.

Impeachment of foreign judgment.

668. A foreign judgment may be impeached for fraud or collusion.

The authorities restrict the rule to fraud or collusion which could not

have been proved in the action. But it is suggested that this qualification should be omitted.

Foreign judgment, forbidden to be enforced.

669. No nation is bound to give effect to a foreign judgment, if the enforcement is forbidden by an express¹ provision of its own law.

See Article 666.

Consent to execution of foreign judgment.

670. A foreign judgment cannot be executed within the territorial jurisdiction of a nation without its consent.

Judgment in rem.

671. A judgment against a specific thing, whether it expressly determines the title to the thing or merely directs specifically its sale,¹ is conclusive upon all the world as to the title under the judgment or under the sale had pursuant to it.

¹ Judgments directing sale for satisfaction of a debt, were held to be in the nature of judgments *in rem*, and governed by the rule above stated in *Imrie v. Castrique*, 8 *Common Bench Rep.*, (N. S.,) 405.

Judgment as to status of a person.

672. A judgment in respect to the personal, political or legal condition or relation of a particular person is conclusive upon all persons.

Judgments on pedigree have been held within the rule that the record of a judgment *in rem* is evidence of the facts adjudicated against all the world. *Ennis v. Smith*, 1852, 14 *Howard's U. S. Supreme Ct. Rep.*, 400.

Effect of foreign judgments of divorce, insolvency and succession.

673. The effect of a judgment, rendered in a case of divorce, or of the administration of the estate of an insolvent or decedent, is subject to the provisions of the next three Chapters.

TITLE XXXI.

RULES APPLICABLE TO PARTICULAR SUBJECTS

CHAPTER L. Divorce.

- LI. Bankruptcy and insolvency.
- LII. Estates of decedents.
- LIII. Admiralty.

CHAPTER L.

DIVORCE.

ARTICLE 674. Power of divorce.

- 675. Jurisdiction unaffected by change of domicil.
- 676. The domicil required for jurisdiction.
- 677. Judgment of divorce for defendant.
- 678. Judgment of divorce everywhere valid.
- 679. Sufficiency of cause of divorce.
- 680. Evasion of law.
- 681. Obligations.
- 682. Disabilities.
- 683. "Divorce" defined.

The following Articles on the vexed subject of divorce have been framed with a general regard to the principle suggested by *Westlake*, (*Private Intern. L.*, p. 342.) "that divorces should not be granted when they will not be internationally respected, nor refused when they are demanded by the policy and morals of the forum."

As the law now stands, hardly any state observes the same rule in recognizing the validity of divorce granted by other states, which it asserts in the exercise of its own jurisdiction to grant divorce. The decided tendency of the English and American decisions, however, is toward the simple and uniform principle, that the jurisdiction to grant divorce ought to depend upon the domicil of the parties, or of one of them, at the time of suit.

The contradictory or conflicting rules which various states have adopted as defining their own jurisdiction in this respect may be contrasted as follows:

1. That a State may grant divorces to its own citizens or subjects.
2. That a State where a marriage is contracted may dissolve the marriage.
3. That the State where the husband was domiciled at the time of his marriage, may dissolve the marriage.
4. That a State within which an offense against the marriage tie is committed may dissolve the marriage.
5. That a State in which the parties, (that is to say the husband,) had a domicil at the time of an offense, wherever the offense may have been committed, has jurisdiction.
6. That the State where the injured party is domiciled at the time of the offense, has jurisdiction.
7. That the State in which the parties, (that is to say the husband,) has domicil at the time of suit, has jurisdiction.

This rule is, by some authorities, qualified, by conceding that the husband cannot, after the offense, change his domicil so as to prevent the wife from proceeding in the previous domicil.

8. That the State in which a plaintiff is domiciled has jurisdiction without respect to the domicil of the defendant.
9. That the State in which either party is domiciled at the time of suit has jurisdiction.

In many States, particularly those which refer to the domicil at the time of suit, an actual domicil for all intents and purposes is not required, but a residence for a longer or shorter period prescribed by positive rule.

The first rule is asserted on the principles that the status of persons must be determined by the domicil of origin, the land of their birth, and that subjects, wherever they are, must be regarded, at least by the courts of their own country, as retaining their original character.

The third rule is asserted by some authorities as the exclusive ground of jurisdiction, upon the principle that the law of the place should be regarded as a part of the contract.

The fifth rule is asserted as the exclusive rule of jurisdiction, on the ground that the offense is against the law which governs the status of the parties.

The seventh, upon the ground that it is for each State to regulate the status of persons domiciled within it; and that, as the law which may be in force at the time of suit ought to govern, so the law of the *place* of which the parties are subject at the time of suit ought to govern.

The other rules asserted are embodied, either singly or in combination, in the legislation of various States, but have not been the subject of so much discussion in an international point of view.

The provisions of the statutes of a few of the American States are as follows:

The rule in *Massachusetts* in reference to the granting of judicial declarations of the nullity of marriages, void under the statute, is as follows: Upon proof of the fraud or other cause of nullity, the marriage shall be declared void by a sentence of divorce or nullity, notwithstanding that such marriage was solemnized out of the State, if the libellant had his domicil

here when the marriage was so solemnized and when the libel was filed. *Gen. Stat. of Massachusetts*, of 1860, p. 532, § 4.

In reference to divorces, strictly so called, the rule is as follows: When the libellant has resided in this State five consecutive years next preceding the time of filing the libel, a divorce may be decreed for any cause allowed by law, whether it occurred in this commonwealth or elsewhere; unless it appear, that the libellant has removed into this State for the purpose of procuring a divorce. *Id.*, § 11.

The law of *Connecticut* is as follows: "If the petitioner shall have removed from any other State or nation to this State, and shall not have statedly resided in the State three years next before the date of the petition, the petitioner shall not take anything by the petition, unless the cause of divorce shall have arisen subsequently to the removal into this State, or unless the adverse party shall have statedly resided in this State three years next before the date of the petition, and actual service of the petition shall have been made upon such party, in which cases the petitioner may maintain the petition, although he or she shall not have removed into this State, nor resided therein, three years next before the date of the petition." *Gen. Stat. of Connecticut*, of 1866, p. 306, § 35.

In *Pennsylvania*, the statute which formerly allowed divorces to be granted only on the application of a citizen of the State who has resided for a year within it has been modified to allow divorces to be granted to a plaintiff who either is a citizen or has resided in the State for one year previous to filing the petition. *Purdon's Digest, by Brightly*, 346-7.

The law of the place of the actual *bona fide* domicil of the parties, gives jurisdiction to the proper courts to decree a divorce for any cause allowed by the local laws without reference to the law of the place of the original marriage. This is the rule laid down, as that established in *Pennsylvania*, in *Colvin v. Reed*, 55 *Pennsylvania State Rep.*, 375.

But the courts held that the power is only to be exercised where the parties at the time of the injury were actually domiciled within the State. *Dorsey v. Dorsey*, 7 *Watts (Pennsylvania) Rep.*, 349. This rule has been extended in the case of desertions, to those taking place in other States of the Union, but not to those taking place abroad. *Bishop v. Bishop*, 30 *Pennsylvania State Rep.*, 412.

In *New York*, in cases of adultery, &c., the courts have jurisdiction:

1. Where both husband and wife were inhabitants of this State, at the time of the commission of the offense;
2. Where the marriage has been solemnized, or has taken place in this State, and the injured party, at the time of the commission of the offense, and at the time of exhibiting the bill of complaint, shall be an actual inhabitant of this State;
3. Where the offense has been committed in this State, and the injured party, at the time of exhibiting the bill of complaint, is an actual inhabitant of this State. 2 *New York Revised Statutes*, p. 144, § 38.

The statute of *Ohio* requires the petitioner to be a resident of the State at least one year before filing the petition, and allows a divorce whether the marriage took place or the cause of divorce occurred within the State

or elsewhere. If the defendant is not a resident of the country, service may be by publication and mailing. *Rev. Stat. of Ohio, by Swan, &c.*, vol. I., p. 513, 511.

The statute of *Illinois* is, "No person shall be entitled to a divorce in pursuance of the provisions of this chapter, who has not resided in the State one whole year previous to filing his or her bill or petition, unless the offense or injury complained of was committed within this State, or whilst one or both of the parties resided in this State." *Statutes of Illinois, by Scates, T. & B.*, vol. I., p. 150, § 3.

The statute of *Indiana* provides that, "divorces may be decreed by the circuit courts of this State, on petition filed by any person, who, at the time of filing such petition, shall have been a *bona fide* resident of the State one year previous to the filing of the same, and a resident of the county at the time of the filing of such petition, which *bona fide* residence shall be duly proven by such petitioner to the satisfaction of the court trying the same." Act of March 4, 1859, *Statutes of Indiana*, of 1862, vol. II., p. 350, § 6.

The statute of *California* requires residence within the State by the plaintiff for divorce, for a period of six months immediately preceding the application. *General Laws of California*, vol. I., p. 2415.

The rule in *Virginia* is as follows: "No such suit shall be maintainable, unless the parties, or one of them, is a resident of the State at the time of bringing the suit. The suit shall be brought in the county or corporation in which the parties last cohabited, or (at the option of the plaintiff,) in the county or corporation in which the defendant resides, if a resident of the State; but if not, then in the county or corporation in which the plaintiff resides." *Code of Virginia*, of 1860, p. 530, § 8.

Nearly all these rules, it will be seen, authorize divorces in cases in which the existing rules of international law would not recognize the validity of a divorce.

Under the *English statute* it is understood that the courts have jurisdiction to grant divorces where the domicil of the parties is English, although the marriage and adultery took place abroad. They also have jurisdiction where the parties are English subjects although the offending husband has changed his domicil and committed the offense in a foreign domicil, and also where foreigners domiciled abroad are married in England according to English law. *Chitty's Statutes*, vol. I., p. 1275, note *a*.

The English statute authorizes the petition to be served within or without the dominion, or service to be dispensed with entirely by the court.

The provisions of this Chapter, in connection with those of Chapter XXXIX. on MARRIAGE, have been framed in the desire to present a rule which would avoid the grave inconveniences attending an irreconcilable conflict of jurisdiction in reference to a status so closely connected with the morals and welfare of society. No State, it is conceived, ought to grant divorces upon any rule of jurisdiction which it will not reciprocally recognize and respect when exercised by any other State.

Power of divorce.

674. The power of a nation to grant divorces exists in the following cases only :

1. When both parties have their domicil within the nation at the time the application for a divorce is made ;¹ or,

2. When either party has such a domicil and the other is within the jurisdiction of the nation, and has personal notice of the proceeding ;² or,

3. When the marriage was contracted within the nation or by its officers, and the applicant for the divorce is domiciled there at the time of the application, and the other party has such notice as the proper authorities of the nation require.³

¹ *Story, Conf. of L.*, § 597 ; *Westlake's Private International Law*, p. 351 ; *Bishop, (Marriage & Divorce, vol. II., § 144,)* supported the jurisdiction in this case, and it is established also in Scotland.

It is said by *Kent, (2 Commentaries, pp. 117, 118.)* that " if a marriage is dissolved in a foreign country not by a regular judicial sentence but by a special legislative act passed for that purpose ; would such a divorce not be binding here ? While it is conceded to be a principle of public law, that acts valid by the law of the place where they arise are valid everywhere, it is at the same time to be understood that this principle relates only to civil acts founded on the volition of the parties, and not to such as proceed from the sovereign power. The force of the latter cannot be permitted to operate beyond the limits of the territory, without affecting the necessary independence of nations."

In an international Code it seems proper to recognize the power of the nation to grant divorces, leaving the department by which this power is to be exercised, to be determined by the municipal law.

² *Bishop* states, that the jurisdiction exists in this case and that notice is not always necessary, but it seems proper to require it, and the provision contained in subdivision 3 will obviate any real hardship.

³ The difficulty arising when the wrongdoer removes to avoid the jurisdiction has been the subject of some discussion, and suggests the principle of allowing the resort in such case to the State by authority of which the marriage was made.

The Revised Statutes of *Louisiana* of 1850, contain the following provisions : Whenever a marriage shall have been contracted in this State, and the husband, after such marriage, shall remove or shall have removed to a foreign country with his said wife, if said husband shall behave or shall have behaved toward his said wife in said foreign country in such manner as would entitle her, under our laws, to demand a separation of bed, board, or a separation of property, it shall be lawful for her on returning to the domicil where the marriage was contracted, to

institute a suit there against her said husband for the purposes above mentioned, in the same manner as if they were still domiciliated in said place, any law to the contrary notwithstanding. In such cases an attorney shall be appointed by the court to represent the absent defendant; the plaintiff shall be entitled to all the remedies and conservatory measures granted by law to married women, and the judgment shall have force and effect in the same manner as if the parties had never left the State. *Rev. Stat. of Louisiana*, p. 242, § 4.

Jurisdiction unaffected by change of domicil.

675. A change of domicil after proceedings commenced, does not take away the jurisdiction.

This Article is inserted to provide for cases such as those where a domiciled plaintiff changes his domicil to avoid a cross bill by a domiciled defendant or one who is not domiciled within the jurisdiction, but is only found and served there, under the provision of the first and second subdivisions of Article 674.

The domicil required for jurisdiction.

676. The domicil required for the purpose of jurisdiction to grant divorce, must be that defined by Title VII., on DOMICIL.

Judgment of divorce for defendant.

677. If a suit for divorce be within the jurisdiction of the tribunal, it may entertain a complaint from either party, and grant a divorce to the defendant if the case require.

This provision is suggested by *Jenness v. Jenness*, 24 *Indiana Rep.*, 355.

Judgment of divorce everywhere valid.

678. A judgment of divorce pronounced by the proper authority of a nation having jurisdiction, is valid everywhere

Sufficiency of cause of divorce.

679. The sufficiency of a cause of divorce depends exclusively on the law of the forum at the time judgment is pronounced.

Westlake's Private Intern. Law, p. 335.

The English rule, it is understood, adheres to the law of England in respect to the cause of divorce, in testing the validity of a divorce from an English marriage, granted by a foreign court to suitors domiciled within its jurisdiction. But the converse of this rule would not be applied ;

English courts would not grant divorce from a foreign marriage on grounds recognized only by the foreign law.

The rule proposed in the text seems the proper one to secure uniformity.

Evasion of law.

680. A divorce granted by the authorities of any nation to a person, intending to evade thereby the provisions of this Chapter, is invalid everywhere.

Shannon v. Shannon, 86 *Massachusetts Rep.*, 134.

The doctrine of the comity of nations requires this. By the existing rule, such a divorce is perhaps valid in the State where granted. *Walker's American Law*, 717.

Obligations.

681. Obligations imposed by a judgment of divorce follow the person, and may be enforced wherever he is found.

Where a court of competent jurisdiction in New York, decreed a divorce *a mensa et thoro* between man and wife, allowing alimony to the latter, and the husband removed to Wisconsin for the purpose of placing himself beyond the jurisdiction of the court which could enforce it, and while in Wisconsin, without disclosing the circumstance of the divorce in New York, obtained a divorce *a vinculo* on the allegation that his wife had wilfully abandoned him,—it was held that the divorce could not release the husband from his liability to the decree made against him in New York, upon that decree being carried into judgment in any court where the defendant might be found, or within whose jurisdiction he might have acquired a new domicile. *Barber v. Barber*, 21 *Howard's U. S. Supr. Ct. Rep.*, 582.

By other provisions of this Code, a judgment of divorce cannot directly affect the title to real property in another nation, but it may affect the title to personal property, to the same extent as any other transfer by operation of law.

Disabilities.

682. Disabilities imposed by a judgment of divorce, are territorial, and do not affect the capacity of the person when in another jurisdiction, if by the law of the latter place, such disabilities do not exist.

Ponsford v. Johnson, 2 *Blatchford's U. S. Circuit Ct. Rep.*, 51.

A decree of divorce pronounced by the court of chancery of New York, was, in its purport and by force of the statute of the State, regarded as an absolute dissolution of the marriage contract for both parties, but the disqualification or disability to marry again declared by the statute as attaching to the guilty party by way of penalty was considered as operative only within the State of New York, and not as incapacitating him from contracting a valid marriage in the State of New Jersey, where the same disability does not exist. *Ponsford v. Johnson*, *supra*.

The statutes of Massachusetts contain a provision that, "When a divorce from the bond of matrimony, except for the cause of adultery, has been granted under the laws of this State or any State or territory of the United States, the justices of the supreme judicial court, or either of them, upon petition filed by the party against whom the divorce was granted, (if the party reside in this State at the time of granting the divorce,) and upon such [notice] as the court shall order, may authorize such party to marry again." *General Stat. of Massachusetts*, of 1860, p. 534, § 26.

"Divorce" defined.

683. The term "divorce" as used in this Code includes a judgment declaring the parties or either of them free from any or all of the personal obligations of marriage.

This will include decrees of nullity and separation, as well as decrees of dissolution of marriage.

In *Birt v. Boutinez*, *Law Rep.*, 1 *Probate & Divorce*, 487, it was held that the parties having been married in Scotland, and a second time in Belgium, a Belgian judgment dissolving the Belgian marriage, did not dissolve the Scotch marriage.

Under the uniform rules embodied in this Code, a judgment of divorce should reach the *status* of the parties, and not be limited to a particular contract.

CHAPTER LI.

BANKRUPTCY AND INSOLVENCY.

ARTICLE 684. Validity of discharge.

685. Transfer of property.

686. Judgment of bankruptcy without transfer
of property.

Validity of discharge.

684. The nation, whose law, according to article 603¹, governs the interpretation of a contract, or whose law creates any other obligation, has jurisdiction to grant a discharge therefrom; and such discharge, if valid according to its law, is valid everywhere.²

A discharge granted in any other place, is valid only as against the nation by whose authority the same is granted, its members and its domiciled residents,³ and

such persons as have obtained or are seeking the benefit of the proceedings in which it was granted.'

¹ Chapter XLVI. on CONTRACTS.

² *Story, Confl. of L.*, § 331. This is the general principle of international law laid down by *Story, (Id.*, § 340,) and the American cases restricting the effect of a bankruptcy discharge to indebtedness due to citizens of the state are regarded by him as resulting from the peculiar principles of American constitutional law, and not applicable to foreign discharges. Although some other authorities take a different view it is suggested as better to adopt this general principle, and make the discharge valid everywhere, subject to the right of every State to apply all property within its territorial jurisdiction to the payment of creditors. See Articles 583 and 685.

³ *Story, Confl. of L.*, § 342.

⁴ Persons who voluntarily prove their claims in the state where the discharge is granted, thereby place themselves under its jurisdiction. *Dunlap v. Rogers*, 47 *New Hampshire Rep.*, 281; *Clay v. Smith*, 3 *Peters' U. S. Supr. Ct. Rep.*, 412.

The act relied on must, of course, be unequivocal. *Donnelly v. Corbett*, 7 *New York Rep.*, 507.

But the rejection by courts in one state, of the claim of a non-resident against the insolvent estate of a resident, will not bar the same claim when presented in the state of the domicile of such non-resident. *Taylor v. Barron*, 35 *New Hampshire Rep.*, 484.

Transfer of property.

685. A transfer of movables made by a debtor, whether by reason of judicial proceedings or otherwise, which is valid by the law of the place where it is made, is valid as to such property everywhere, subject to the right of any other nation to give a preference or lien in respect to the movables within its jurisdiction to creditors who are subject to its jurisdiction as defined by Title XXVII., on JUDICIAL POWER.

⁴ *Kent's Commentaries*, 406; *Hunt v. Columbian Ins. Co.*, 55 *Maine Rep.*, 290; *Dunlap v. Rogers*, 47 *New Hampshire Rep.*, 281.

It has generally been held, when questions have arisen in the United States between the bankrupt under a foreign law and his assignees under the same law, they both being citizens and subjects of the country enacting the law, where no rights of creditors, citizens of the United States, intervened, that effect should (there) be given to the foreign law. *Plestero v. Abraham*, 1 *Paige (New York) Rep.*, 236; *Abraham v. Plestero*, 3 *Wendell (New York) Rep.*, 540; *Hall v. Boardman*, 14 *New Hampshire Rep.*, 38; *Hoag v. Hunt*, 21 *Id.*, 106; *Smith v. Brown*, 43 *Id.*, 44; *Dunlap v. Rogers*, 47 *New Hampshire Rep.*, 281; *Hall v. Winchell*, 38 *Vermont Rep.*, 588.

It is the settled policy of the courts in the United States, that a prior

assignment in bankruptcy under a foreign law will not transfer property elsewhere as against a creditor of the bankrupt who is a citizen of the government where the property is situated. *Frink v. Buss*, 45 *New Hampshire Rep.*, 325.

Judgment of bankruptcy, without transfer of property.

686. A judgment divesting a debtor of his property, without a transfer by him, is valid in the cases, and to the extent prescribed in Chapter XLVIII., on JUDICIAL POWER IN CIVIL CASES.

CHAPTER LII.

ESTATES OF DECEDENTS.

ARTICLE 687. Jurisdiction to grant administration.

688. Limit of administration.

689. Local nature of power of administration.

690. Actions by foreign personal representative.

691. Principal and ancillary administrations.

692. Title to movables.

693. Ancillary representative.

694. Course of administration.

695. Application of property to payment of decedent's debts.

696. Actions against foreign personal representative.

697. When judgment of Probate Court, as to right of succession, is conclusive.

698. Probate of will of property in foreign country.

Jurisdiction to grant administration.

687. Subject to the provisions of articles 338 to 344 inclusive,¹ the nation within whose jurisdiction the movables² of a decedent or his debtors³ or their property are found, has jurisdiction⁴ to grant authority to administer such movables and the debts due to the decedent by such debtors, in the mode prescribed by this Chapter, whether with or without a will.

¹ The reference is to the consular power to administer the assets of seamen, &c.

² Matter of Texidor, 2 *Bradford's Surrogate* (New York) Rep., 105; Public Administrator v. Hughes, 1 *Id.*, 125. "Upon the whole," says Surrogate BRADFORD, in Kohler v. Knapp, (1 *Bradford Surr. New York Rep.*, 244,) upon a review of authorities, "I am inclined to think that the modern rule, accommodating itself to new cases and exigencies, is in favor of the exercise of jurisdiction upon the sole basis of assets of a foreign decedent coming into the State after his decease."

By the treaty between the United States and the

Swiss Confederation,	1850, Art. VI., 11 <i>U. S. Stat. at L.</i> , 587.
Brunswick and Lüneberg,	1854, " I., 11 <i>Id.</i> , 601.
Two Sicilies,	1855, " VII., 11 <i>Id.</i> , 639.
France,	1853, " X., 10 <i>Id.</i> , (Tr.) 114.
Russia,	1832, " X., 8 <i>Id.</i> , 444.

and some other American treaties, any controversy that may arise among the claimants to the same succession as to whom the property belongs, shall be decided according to the laws and by the judges of the country in which the property is situated.

See also, treaty between United States and

Hesse-Cassel,	March 26, 1844, 9 <i>U. S. Stat. at L.</i> , (Tr.) I., Art. V.
Bavaria,	Jan. 21, 1845, 9 <i>Id.</i> , 9.
Saxony,	May 14, 1845, 9 <i>Id.</i> , 48.
Nassau,	May 27, 1846, 9 <i>Id.</i> , 48.

See, however, the convention between France and Austria, for the regulation of successions, Dec. 11, 1866, Art. II., (9 *De Clercq*, p. 675,) which provides that claims to the succession of movables left in one country by subjects of another, whether at the time of their death established there, or simply transitory persons, are within the jurisdiction of and determinable by the laws of the State to which the deceased belonged.

³ Debts constitute assets where the debtor resides. Kohler v. Knapp, 1 *Bradford's Surrogate* (New York) Rep., 241.

⁴ When, however, its exercise of such jurisdiction would be productive of injustice, inconvenience, or conflicting equities, the nation should decline to exercise it, and remit the property abroad for *distribution*. Harvey v. Richards, 1 *Mason U. S. Circ. Ct. Rep.*, 381, 413; *Cooper's Equity Pleadings*, pp. 1, 2, 3; Parsons v. Lyman, 20 *New York Rep.*, 103, 125.

Limit of administration.

688. The provisions of the last article do not apply :

1. To those movables belonging to a decedent at the time of his death, which have been brought within the jurisdiction after a personal representative duly appointed elsewhere has taken possession of them within the jurisdiction of the nation appointing him ; nor,¹

2. To debts due by parties to a negotiable instrument which at the time of the holder's death was within another jurisdiction, the decedent being also domiciled therein at his death.²

¹ *Westlake's Private International Law*, § 295 ; *Story, Conf. of L.*, § 520 ; *Currie v. Bircham*, 1 *Dowling & Ryland's Rep.*, 35.

² *Owen v. Moody*, 29 *Mississippi* (7 *Cushman*) *Rep.*, 79. This exception has been recognized in respect to property which never became assets within the local jurisdiction but was removed into that jurisdiction from the place of principal jurisdiction.

Local nature of power of administration.

689. A personal representative cannot act beyond the limits of the nation appointing him, in relation to property of the decedent, except as provided in the next article.

This provision departs somewhat from the rule recognized by the New York Court of Appeals. *Peterson v. Chemical Bank*, 32 *New York Rep.*, 21.

The rule laid down in *Marcy v. Marcy*, 32 *Connecticut Rep.*, 308, as being supported by the current of American decisions at the present day, is that, in the absence of an ancillary administration, a principal administrator, and *a fortiori*, an executor, can collect and remove debts or property due or situated in another State, if voluntarily paid or given up.

Actions by foreign personal representative.

690. A foreign personal representative may sue, without any other appointment, to enforce his title to the movables and debts mentioned in article 688, or to recover debts due by persons who at the time of the creditor's death had their domicile within the jurisdiction of the nation appointing him.

Principal and ancillary administrations.

691. The place of domicile of the decedent is the place of principal administration ; every other administration is ancillary.

Cummings v. Banks, 2 *Barbour (New York) Rep.*, 602 ; *Ordronaux v. Helie*, 3 *Sandford's Chancery Rep.*, 512 ; *Juarez v. Mayor, &c. of New York*, 2 *Id.*, 173 ; *Churchill v. Prescott*, 3 *Bradford's Surrogate (New York) Rep.*, 233.

Title to movables.

692. Title to movables duly vested in a foreign personal representative, or duly acquired through a foreign administration and executed by possession, is valid everywhere.

Story, Conf. of L., §§ 258, 259 ; *Peterson v. Chemical Bank*, 32 *New York Rep.*, 21.

The principle here applied is not to recognize the power conferred by the courts as having any extra-territorial effect; but to recognize the title acquired under the power, executed by possession, as valid everywhere.

Ancillary representative.

693. An ancillary representative represents the estate only so far as concerns the assets coming under his control.

Course of administration.

694. Every ancillary personal representative is bound to transmit to his principal the assets remaining in his hands after satisfying the claims of creditors, who are subject to the jurisdiction of the nation appointing him, to be administered by the principal either extra-judicially, or if needful, under the direction of the tribunals of the domicile.

Enohin v. Wylie, 31 *Law Journ. Chancery*, 404; per Lord Westbury; to the contrary, Lords *Cranworth* and *Chelmsford*.

It was held, however, in *Irwin's Appeal from Probate*, 33 *Connecticut Rep.*, 128; and in *Dawes v. Head*, 3 *Pickering (Massachusetts) Rep.*, 147, that if there is a deficiency of assets in either jurisdiction, all the property must be divided among the creditors in both jurisdictions equally, and if there is a surplus in the foreign jurisdiction, it must be remitted to the domestic administrator or distributed there in recognition of, and in subordination to the *title* and *rights* conferred by the will or the law of the domicile.

Application of property to payment of decedent's debts.

695. The nation having jurisdiction to grant authority to administer, has also exclusive jurisdiction to apply the movables and debts to which such authority extends, to the payment of debts due to persons subject to its jurisdiction, except debts due by persons having at the death a different domicile from that of the decedent, payment whereof has been obtained within the jurisdiction of the nation of the creditor's domicile¹ by a personal representative duly appointed there.

¹ Payment to the administrator of the creditor's domicile by a debtor domiciled elsewhere at the death, made at his own domicile, is no bar to an action for the same debt brought by an ancillary administrator, appointed in the debtor's domicile, even subsequently to the payment. *Young v. O'Neal*, 3 *Sneed's (Tennessee) Rep.*, 55; Anonymous, 2 *Amer. Law Review*, 398.

Actions against foreign personal representative.

696. A personal representative who after having lawfully obtained possession of assets, becomes domiciled in the territory of any other nation may be sued as such in its courts by persons entitled to such assets.

This rule was applied in favor of a creditor in *Baker v. Smith*, 3 *Metcalfe (Kentucky) Rep.*, 264; and of the next of kin in *Marrion v. Titsworth*, 18 *B Monroe (Kentucky) Rep.*, 597.

In *Evans v. Tatem*, 9 *Sergeant & Rawle's (Pennsylvania) Rep.*, 259, it was *held*, however, that mere presence in the foreign State without the acquisition of a domicile there, would be sufficient to found the jurisdiction.

When judgment of probate court, as to right of succession, is conclusive.

697. The determination of a court of probate in respect to the right of succession to movables is conclusive in the tribunals of other nations in proceedings for the settlement of the same estate,¹ only² when the deceased was domiciled within the jurisdiction at the time of his death.

¹ *Dogliani v. Crissini*, *Law Rep.*, 1 *House of Lords*, 301.

² The parties in interest in the place of principal administration are not bound by a judgment given in the place of ancillary administration. *Low v. Bartlett*, 90 *Massachusetts Rep.*, 259; *Ela v. Edwards*, 85 *Id.*, 48.

Consuls have power to administer on the estates of foreigners or decedents domiciled abroad, in the cases provided in Articles 338 and 340. The treaty between the United States and Honduras, July 4, 1864, (13 *U. S. Stat. at L.*, 704,) authorizes the consular officer of the nation of a foreigner dying in the country to which the consular officer is accredited to appoint curators to take possession of his estate, so far as the local laws will permit, for the benefit of the heirs and creditors, giving notice to the local authorities.

The treaty between the United States and Paraguay, Feb. 4, 1859, (12 *U. S. Stat. at L.*, 1096, Art. X,) allows the consular officer to take charge of the property.

Probate of will of property in foreign country.

698. A will of a domiciled resident disposing only of property in a foreign country is entitled to probate in the country of residence, for the purpose of clothing the executor with power to take proceedings in the foreign country.

To the contrary see, *Matter of Coode*, *Law Rep.*, 1 *Probate & Divorce*, 449.

CHAPTER LIII.

ADMIRALTY.

ARTICLE 699. Extent of admiralty jurisdiction of a nation.

700. "Seas" defined.

701. Rules of decision in extra-territorial torts.

702. Uniform procedure in admiralty.

The provisions of the Code in relation to jurisdiction over property, and the effect of judgments *in rem*, are supposed to be adequate for the purpose of fixing the proper limits of the judicial power in cases of admiralty jurisdiction in its international aspects. The distinction between the jurisdiction of ordinary courts and those of admiralty, is mainly important as a question of municipal law, and even there is rapidly disappearing under recent legislation, the tendency of which is towards uniformity of remedies.

The admiralty jurisdiction in criminal cases is regulated by Chapter XLIX., on JUDICIAL POWER IN CRIMINAL CASES.

Extent of admiralty jurisdiction of a nation.

699. The admiralty jurisdiction of a nation in civil cases extends,

1. To all acts done upon the seas ;¹
2. To all property constructed for or employed in navigating the seas ; and,
3. To all contracts relating to such property or for services on the seas, and to their incidents, when the persons or property are subject to the jurisdiction as defined by articles 309 and 312.

¹ *Story's Conf. of L.*, 423 g ; 423 h.

"Seas" defined.

700. The "seas" mentioned in the last article include :

1. Waters beyond the limits of any nation ; and,
2. Navigable waters, whether tidal or not, in any place within the limits of the nation.

The jurisdiction is not limited to tidal waters. *Genessee Chief v. Fitzhugh*, 12 *Howard U. S. Supr. Ct. Rep.*, 443 ; *Fretz v. Bull*, 12 *Id.*, 466 ; 2 *Parsons on Shipping*, Bk. 3, ch. I. ; *The Eagle*, 7 *Wallace's U. S. Supr. Ct. Rep.*, 15.

Rules of decision in extra-territorial torts.

701. In cases of collision between ships of different nations or other acts of damage to person or property, occurring beyond the jurisdiction of any nation, and in respect to which Chapter XXXIII., on COLLISION, does not afford a rule of decision, the extent of the remedy in damages to which the injured party is entitled is determined by the law of the forum.

By the other provisions of this Code, (Articles 316 and 328,) the same rule must be applied to foreigners as to members.

Uniform procedure in admiralty.

702. All civil suits in the exercise of admiralty jurisdiction shall be commenced by summons. The cause of action shall be stated in a complaint, and the defense in an answer.

The determination of the controversy shall be by a judgment.

The provisional remedies, the modes of trial and of executing the judgment shall be settled by a conference of judges in admiralty one appointed by each nation, who shall agree upon uniform rules of procedure.

See *Report of British Judicature Commission*, 1869.

For a memorandum upon the recent increased jurisdiction and changes in the practice of English admiralty, see *Accounts and Papers*, 1867, vol. LVII., (19.)

ERRATA.

- PAGE 289. In the table, the fineness of the Danish piece of ten thalers should be $\frac{895}{1000}$ instead of $\frac{595}{1000}$.
290. Second line from bottom, instead of *unit of account*, read *common measure of value*.
306. Line 22 from bottom, for (2211.68 *cubic inches*) read (2218.19 *cubic inches*).



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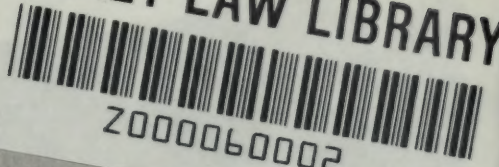
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